



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

Chamber Ref: FTS/HPC/CV/22/1861

Re: Property at 27 Fairview Circle, Danestone, Aberdeen, AB22 8ZQ (“the Property”)

Parties:

Mr Alexander Bruce, 5 Lusylaw Road, Banff, Aberdeenshire, AB45 1EW (“the Applicant”)

Mr Lewis Edwards, Mr Austin Wood, 3 Elmbank Court, Kinellar, Aberdeen, AB21 0SS; 3 Elmbank Court, Kinnellar, Aberdeen (“the Respondents”)

Tribunal Members:

Ms H Forbes (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £2570.35

Background

1. This is an application dated 14th June 2022. The Applicant is seeking an order for payment in respect of repairs, replacement of items, cleaning, carpeting and decorating costs. The costs arise from a private residential tenancy agreement between the parties that commenced on 7th March 2018. A copy of the tenancy agreement was lodged, together with invoices for the cost of works and damage to the Property, inspection report, inventory reports and copy correspondence between the parties.
2. Intimation of the application and a Case Management Discussion was made upon the Respondents by Sheriff Officers on 15th August 2022.

The Case Management Discussion

3. A Case Management Discussion (“CMD”) took place by telephone conference on 3rd October 2022. The Applicant was in attendance. The Respondents were not in attendance.

4. The Tribunal considered the terms of Rule 29. The Tribunal determined that the Respondents had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondents.
5. The Applicant said he was seeking an order in the sum of £2570.35 in respect of missing items and damage, disrepair and cleaning of the Property. He has already obtained an order for payment in respect of rent arrears. The Applicant referred to the vouching in the case file. He was claiming the following sums:

Balance due from inventory report: £987.95
Replacement of central heating thermostat £212
Contribution towards cost of replacing living room flooring £200
40% of replacement bedroom and stair carpets £411.60
40% of decorating costs £758.80

6. Redecoration of the Property was required due to smoke contamination throughout the Property. Three coats of paint were required to rectify the problem, including a special paint to block the smell. The Applicant said he decided to charge the Respondents 40% of the total cost of redecoration, as other work was required to the Property that was not the fault of the Respondents.
7. The Applicant said the bedroom carpets were quite new before the tenancy commenced. The living room carpet was not so new. The carpets were cleaned professionally after the tenancy ended, but they had to be replaced as they were smelling of cat urine throughout. He replaced the living room flooring with laminate at a significant cost, and was charging the Respondents the sum of £200 towards the flooring, due to the age of the living room carpet. He felt this was a fair estimate.
8. The Applicant said he did not charge for the installation of the central heating thermostat as the invoice supplied by the electrician was not broken down into specific items, and other works were carried out. The Respondents had disconnected the heating boiler and costs were involved in having it reconnected.
9. The Applicant took the Tribunal through the inventory report list, explaining that an external agency had carried out the inventory check and listed the outstanding sums. The original sum of £4861.04 had been reduced by the return of the deposit to the Applicant and by the payment order for rent arrears. The Applicant had also removed some items from the list that were returned by the police or found after the Respondents had left. The Respondents had not disagreed with the outstanding sums from the inventory report.

10. The Applicant referred to an email sent to the Respondents on 31st March 2022 in which he informed them that he would be charging them for damage, missing items and a share of flooring and decorating, as well as the outstanding items from the inventory report. In the email, he offered the Respondents a reduced amount of £1000 to avoid having to take further action. On the same date, the Respondents replied that the Applicant could not keep adding further items to his claim.
11. By email dated 26th April 2022, the Applicant pointed out that he was not adding anything to the rent arrears case that had already been heard. He offered the Respondents the opportunity to set up a payment plan.
12. By email dated 6th May 2022, the Applicant informed the Respondents that the sum he would be claiming would be over £2,500 and reiterated the offer of payment of £1000 in settlement, and a repayment plan. No payment or plan had been forthcoming from the Respondent.
13. The Applicant said the Respondents caused extensive damage to the Property and stole some of his belongings. The police were involved and managed to secure the return of some items. The Respondents were given warning letters, but were not charged. Although the Applicant recovered the suite through the involvement of the police, it was covered in cat hair and stank of cat urine. He had to replace the suite at a cost of £1200, but did not charge the Respondents for the new suite.
14. The Applicant said it cost him a significant amount to restore the Property to a state in which it could be let again, and he felt he had been fair with the Respondents in the sums of money claimed. He had hoped that taking action against the Respondents would avoid them doing the same to someone else, however, he had been informed that there had been similar problems with their next tenancy.

Findings in Fact

15.
 - (i) Parties entered into a private residential tenancy agreement in respect of the Property commencing on 7th March 2018.
 - (ii) The tenancy ended on or around 2nd June 2020.
 - (iii) The Respondents caused damage to the Property and to items within the Property.
 - (iv) The Respondents failed to clean the Property to an acceptable standard.
 - (v) The Respondents failed to keep the garden in an acceptable state.

- (vi) The Respondents failed to remove all their belongings from the Property.
- (vii) The Respondents failed to return the keys to the Property at the end of the tenancy.
- (viii) The Respondents removed furniture from the Property.
- (ix) The Respondents removed a central heating thermostat from the Property.
- (x) The Property required to be cleaned at the end of the tenancy.
- (xi) The Property required to be decorated at the end of the tenancy.
- (xii) Carpets required to be replaced due to the negligence of the Respondents in allowing them to become contaminated with cat urine,
- (xiii) Electrical works were required to the Property at the end of the tenancy due to the Respondents interfering with the heating system.
- (xiv) The Respondents breached clause 19 of the tenancy agreement by failing to take reasonable care of the Property.
- (xv) The Applicant is entitled to restitution for damage caused in breach of the tenancy agreement.

Reasons for decision

16. The Tribunal noted that, in an exchange of emails between the parties on 9th September 2020, whereby the Applicant had reminded the Respondents that they had not responded to his calls for payment in respect of damages and missing property, and reiterating that payment could be made by instalments, the Respondent, Mr Wood, stated '*We are happy enough to set up a payment plan*', going on to state that any theft charges must be dropped before further discussion. The Tribunal also noted an email dated 17th April (no year) whereby the Respondent, Mr Edwards, stated that both Respondents were furloughed but would '*come up with what we can afford per month*' when they were back to work. The Tribunal considered that, although the full sums due were not mentioned in the emails, it appeared that the Respondents were accepting responsibility for making some payment in this regard. Further emails then appeared to go unanswered.

17. The Tribunal considered the Applicant to be entitled to restitution for the considerable damage caused by the Respondents in breach of the tenancy agreement. The tenancy agreement provides at clause 19 that the tenants will pay or be liable to pay the reasonable net costs incurred by the landlord in

successfully enforcing or remedying a notable or material breach of, or significant failure to comply with, the obligations of the tenancy.

18. The Tribunal considered the Applicant had been conservative, reasonable, and honest in the estimation of sums due by the Respondents. The Applicant had given the Respondents an opportunity to make a reduced payment and to set up a payment plan, which had been ignored by the Respondents.

Decision

19. An order for payment is granted in favour of the Applicant in the sum of £2570.35.

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.

H Forbes

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Legal Member/Chair

3rd October 2022
Date