



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/22/3126

Re: Property at 50 Sinclair Street, Stevenston, KA20 4AN (“the Property”)

Parties:

McMail Properties, 17-19 Hill Street, Kilmarnock, KA3 1HA (“the Applicant”)

Ms Susan Macneish, Flat 4, 30 Smith Street, Ayr, KA7 1TF (“the Respondent”)

Tribunal Member:

Karen Kirk (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondents for £4521.05

1. Introduction

This Case Management Discussion concerned an Application dated 25th August 2022 for civil proceedings in respect of a Private Residential Tenancy under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The discussion took place by teleconference.

2. Attendance and Representation

Chris McMail and Miss Rayner attended for the Applicants.

The Respondent was not present. She had been served by Sheriff Officer on the 29th November 2022. She had been intimated upon for this CMD and the earlier CMD. No written representations had been received and there was no appearance at either hearing.

3. Background/Preliminary Matters.

This Application called before the Tribunal alongside previously. an Application for Eviction on 18th November 2022. The Tribunal adjourned to a further Case Management Discussion.

The Tribunal had noted at the first Case Management discussion that the Applicant's had further evidence to substantiate the additional costs sought against the Respondent in regards the condition of the property. This included photographs and an Environmental Health statement. The Tribunal considered it was reasonable and in the interests of justice that the Tribunal has sight of this evidence before considering the application further.

Since the last discussion the Applicant's lodged an environmental health report dated 18th May 2022, 4 photographs from the end of the tenancy provided by the environmental health officer and 5 photographs from the beginning of the tenancy. The Tribunal asked those present to confirm when all of the photographs were taken and that they showed all the relevant rooms.

There were no other preliminary matters.

4. Case Management Discussion.

The Applicant's representative said that the Applicant had heard from the environmental health department who reported concerns that had been raised with them by neighbours about a smell coming from the property. The Applicant had then explained a tenant resided in same and sought assistance from environmental health to obtain entry. It was explained that there had been a report from a neighbour regarding a bad smell. The Applicant had received telephone and email communication and the officer had agreed to attend the property. The final report form the officer had been lodged by the Applicant and contained 4 pictures from the end of the tenancy. The report detailed

"the house has been left in a filthy condition with dog faeces throughout, the heating had been left on which only exacerbated the offensive odour. The furniture / couch was filthy and had been chewed by the tenant's dog. The cooker has been left in a filthy condition.

The house will need a specialist company in to remove the rubbish including the dog faeces. Thereafter a deep clean and disinfection throughout the accommodation needs to be carried out to prevent odour nuisance to nearby residents. “

The Applicant's representative said that whilst a full paint of properties between tenants would be carried out this was a short tenancy and the need to repaint was not reasonable wear and tear. He would have expected a tenancy of less than 2 years to not require a full decoration. This was the case with the flooring and the Tribunal was told there was no choice to replace same as the floorboards of the property were saturated in urine from the Respondent's dog. At the end of the tenancy a professional cleaning company refused to clean same as they could not guarantee a successful clean.

The Applicant's representatives set out that the Applicant's sought a payment order for the rent arrears of £1300 together with the costs as set out. A rent statement had been lodged with detailed that the return of the deposit of £450 was sent by Safe Deposit Scotland and applied to the rent account providing a final amount due for rent arrears to the end of the tenancy in August 2022 of **£1300**. The Applicant's discussed the costs incurred and substantiated each invoice they had lodged for each cost at the end of the tenancy amounting to **£3227.05**.

The Applicant's representative sought a payment order of **£4521.05** in total.

5. Findings in Fact

- 1. The Tribunal was satisfied that a decision could be made in the absence of the Respondent at the Case Management Discussion and to do so would be in the interests of the parties, in the interests of justice and having regard to the Overriding objective. The Respondent had been served personally by Sheriff Officer and had not provided any written representations or appeared at any Case Management Discussion.**
- 2. The Applicants and the Respondent entered into a Private Residential tenancy on 20th January 2021. A copy of the tenancy was lodged.**
- 3. As per the said tenancy the rent per calendar month due by the Respondent to the Applicants was £450.**
- 4. A rent statement dated August 2022 lodged showed rent arrears of £1300 due by the Respondent to the Applicants. The Tribunal found in fact based on the evidence before it that the Respondent was liable for rent arrears due by her to the amount of £1300.**
- 5. Various invoices lodged substantiate costs at the end of the tenancy due to damage in breach of the PRT by the Respondent amounting to**

£3227.05. The Respondent on the evidence provided is liable to the Applicants on balance to the Applicants for these costs.

6. The Tribunal granted a Payment Order for £4521.05

6. Reasons for Decision

The Tribunal was satisfied that the Applicants were the heritable proprietors of the Property. The Tribunal was satisfied that there was a Tenancy between parties and that on the evidence provided it was appropriate having regard to the overriding objective of the Tribunal to make a determination in the absence of the Respondent. The Tribunal had continued matters for further evidence and was provided with an Environmental Health Officer report including pictures and additional pictures at the outset of the Tenancy. The Tribunal was also provided invoices for each cost incurred due to damage and was satisfied the damage was caused by the Respondent in breach of the PRT to the amount of £3227.05. The Tribunal was also satisfied that the respondent was in arrears of rent lawfully due and a Rent Statement for the property as at August 2022 was lodged. Rent owed from same amounted to £1300. Accordingly in terms of Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 the Tribunal granted an Order for payment for the sum of £4521.05 against 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.

Karen Kirk

25th January 2023