



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/23/2141

Property : 124 Fleming Way, Hamilton ML3 9QH (“Property”)

Parties:

James Docherty t/a Excel Property, 12 St Bryde Street, The Village, East Kilbride (“Applicant”)

Sara Walasz, 16 West Main Street, Shotts ML7 5QD (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £5440 plus interest thereon at the rate of 5% per annum should be made.

Background

The Applicant sought an order for payment of £6350 plus interest at the rate of 8% from 13 March 2023. The Applicant had lodged Form F along with the following documents :

1. A Private Residential Tenancy Agreement dated 7 March 2019 which commenced on 14 March 2019.
2. Copy emails between the Parties.
3. A schedule of condition as at 14 March 2019.
4. Photographs of the Property taken on 13 March 2019.
5. Photographs of the Property taken after the Respondent had vacated.
6. A quotation from Excel Property dated 14 March 2023 for various works totalling £5200.

7. A quotation from Excel Property dated 24 March 2023 for various works totalling £590.
8. An invoice from Excel Property for works carried out to the Property totalling £5440.

Case Management Discussion (“CMD”)

A CMD took place before the Tribunal on 27 September 2023 by teleconference. James Docherty of the Applicant was in attendance. There was no appearance by the Respondent.

Mr Docherty told the tribunal that “Excel Property” was his trading name. He said that he employed some tradesmen and subcontracted work to others. He said that he had carried out the works required to the Property after the Respondent vacated, using sub-contractors as required.

The Tribunal noted that the Applicant sought to recover from the Respondent £6350. The tribunal considered each element of the claim in turn as follows :

Cleaning - £165 plus £145 : Mr Docherty said that the charge of £165 was for the initial clear up and the charge for £145 was for a clean once all repair work had been done. He said there was some crossover and a charge of £210 was more appropriate.

Remove hob and sink - £730 : Mr Docherty said that the Respondent had fitted a metal angle to the worktop in the kitchen which meant all of the worktops were damaged. They had to be replaced. The sink and hob had to be removed and re-fitted.

Fill holes in walls - £295 : Mr Docherty told the Tribunal that the Respondent had fitted a TV to the wall which left holes following removal. The wet plaster referred to was caused by water in the bathroom not draining properly in the wet floor system which the Respondent had interfered with. He said that the plaster came away and had to be redone.

Supply and fit ceiling pendant in front bedroom - £40 : Mr Docherty told the Tribunal that the Respondent had removed the ceiling light and pendant in the front bedroom leaving only wires. This had to be replaced.

Remove damaged glass in sunroom and renew - £140 : Mr Docherty told the Tribunal that the single glazing in the sunroom was damaged. The Tribunal noted the schedule of condition stated there was no damage to glazing at the start of the tenancy.

Remove damaged vinyl flooring and fit new - £330 : Mr Docherty told the Tribunal that the vinyl in the sunroom had to be replaced as it was ripped.

Works in bathroom - £1770 and £445 : Mr Docherty told the Tribunal that the bathroom in the Property had a wet floor system. He said that the Respondent ruined the wet floor system by lifting the vinyl and plywood then replacing with inappropriate materials. This meant the water did not drain into the central drain which is required for a wet floor system. He said that this caused dampness in the bathroom wall. He said that he had thought the basin pedestal and shower screen could be re-used but the pedestal had been removed and the shower screen was chipped. This meant additional costs of £445 were incurred. Mr Docherty referred to the photographs lodged which showed the flooring in the shower area had been replaced. He noted the circular drain and said that the vinyl should come over the outer circle and into the smaller circle but in this case it went under both. Silicon had been applied round the drain. This meant the drain was not properly draining the water from the shower area. Mr Docherty referred to the email from the Respondent in which she referred to having instructed this work herself.

Painting - £1590 : Mr Docherty told the Tribunal that the Property required to be decorated throughout. He said the actual costs were £250 less than the quote lodged.

Tidy garden, empty bins - £140 : Mr Docherty told the Tribunal that the Respondent had left the bins full of rubbish that the council would not collect as it was in the wrong recycling bin. The Applicant had to arrange for removal.

Two months of mortgage payments - £460 : Mr Docherty told the Tribunal that the works to the Property required after the Respondent left had only recently been finished. They had taken more than two months. He said he accepted that was not all the Respondent's fault and was partly due to contractors not turning up and the difficulty in getting contractors.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement dated 7 March 2019 which commenced on 14 March 2019 ("Tenancy Agreement").
2. In terms of the Tenancy Agreement the Respondent agreed to take reasonable care of the Property and agreed and to replace or repair any of the contents which are destroyed, damaged, removed or lost during the tenancy, fair wear and tear excepted, where this was caused wilfully or negligently by the tenant.
3. The Applicant incurred a cost of £210 to clean the Property at the end of the tenancy.

4. The Applicant incurred a cost of £730 to replace damaged worktops in the kitchen of the Property.
5. The Applicant incurred a cost of £295 to fill in holes left in the Property and to re-plaster the wall on the upper floor of the Property which had been made damp by water not draining from the bathroom wet floor system
6. The Applicant incurred a cost of £40 to replace the ceiling light in the front bedroom of the Property.
7. The Applicant incurred a cost of £140 to replace damaged glass in the sunroom of the Property.
8. The Applicant incurred a cost of £330 to replace damaged vinyl in the sunroom of the Property.
9. The Applicant incurred a cost of £2215 to rectify the damage caused to the wet floor system in the bathroom of the Property.
10. The Applicant incurred a cost of £1340 for painting and decorating the Property.
11. The Applicant incurred a cost of £140 to clear the garden and bins at the Property

Reasons for the Decision

The Tenancy Agreement sets out the contractual relationship between the Parties. In terms of clause 17 the Respondent agreed to take reasonable care of the Property. Clause 18 notes that the Applicant is responsible for ensuring the Property meets the Repairing Standard (in terms of the Housing (Scotland) Act 2006) but notes that the Repairing Standard does not cover work for which the tenant is responsible due to his duty to use the Property in a proper manner. Clause 25 provides that the tenant agrees to replace or repair any of the contents which are destroyed, damaged, removed or lost during the tenancy, fair wear and tear excepted, where this was caused wilfully or negligently by the tenant.

The Tribunal considered the photographs lodged by the Applicant along with the quotation for works and the final invoice for work carried out which totalled £5440. The Tribunal also considered the oral submissions from the Applicant in which he explained the damage at the Property and the works which required to be carried out to rectify the damage at the end of the tenancy. On the basis of the evidence presented it was apparent that the Respondent had failed to comply with her obligations in terms of the tenancy agreement and that the Applicant had incurred cost of £5440 as a result. The Tribunal was not content that a sum equivalent to two months mortgage payments

was incurred as a result of breach of contract on the part of the Respondent. The Tribunal determined that 5% was a reasonable rate of interest.

Decision

The Tribunal grants an order for payment of £5440 plus interest thereon at the rate of 5% per annum.

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.



**Joan Devine
Legal Member**

Date : 27 September 2023