

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) under Section 16 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/20/2509

Re: Property at 156 Gartcraig Road, Riddrie, Glasgow G33 2SW (“the Property”)

Parties:

Mr Stephen David McCullagh, 105 Gartcraig Road, Riddrie, Glasgow, G44 3RY (“the Applicant”) and

Mrs Pamela Timoney and Mr Brian Timoney, both residing at 78 Crofton Avenue, Glasgow, G44 5JD (“the Respondents”)

Tribunal Members:

G McWilliams- Legal Member

E Dickson- Ordinary Member

Decision

1. The Tribunal, having considered the parties’ evidence and submissions, makes an order for payment of the sum of £612.00 to the Applicant by the Respondents.

Background

2. This is an Application for a payment order brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (“the 2017 Rules”). The Application papers were sent to the Tribunal on 2nd December 2020.
3. The Applicant sought payment of the sum of £997.00, in respect of claimed rent arrears, from the Respondents.

Case Management Discussion

4. A Case Management Discussion (“CMD”) proceeded remotely by telephone conference call on 9th February 2021 Reference is made to the Notes on the CMD.

Hearing

5. An evidential Hearing took place remotely by telephone conference call on 30th March 2021. The Applicant and the Respondents attended.
6. The Applicant and Respondents had lodged written submissions, with supporting papers, in advance of the CMD and Hearing.
7. At the outset of the Hearing the parties agreed that there were three issues which required to be focused on, namely rent due in February and March 2018, rent due in January 2019, and rent due in October 2020.
8. At the CMD the Applicant reduced his claim for payment to the sum of £937.00, having agreed with the Respondents that they had made payment for a boiler service charge, in the sum of £60.00, in September 2017.

Evidence and Submissions

9. The Applicant stated that he relied on the terms of his Application and the representations and documentation which he had submitted in advance of the CMD and Hearing.
10. Regarding the rent due in February and March 2018, the Applicant acknowledged that the deductions from the monthly rental amounts of £450.00, due on 1st February and 1st March 2018, of £150.00 and £175.00 respectively, had been made by the Respondents as they had replaced carpets within bedrooms in the Property. The Applicant acknowledged that the Respondents had lodged copies of invoices from Jem Carpets dated 31st January and 3rd February 2018 with the Tribunal in an e-mail sent on 24th February 2021. The Applicant stated that he did not consider that he was responsible for replacing the carpets. He acknowledged that there were carpets in those bedrooms at the commencement of the parties’ tenancy agreement. The Applicant stated that he had informed the Respondents that they could deduct monies from their rent in the months of February and March 2018, in respect of the carpets costs, but that he wished them to then repay the shortfall by adding an extra sum of £50.00 to monthly rents going forward.
11. In respect of the rent due in January 2019, the Applicant stated that he was not informed by the Respondents that they were withholding rent due to any problems in the Property. He acknowledged that, in their representations lodged with the Tribunal, the Respondents had subsequently stated that they

withheld rent due to a radiator fault. The Applicant made reference to his documentation numbers 101, 102, 103, 104, 105, and 106, and also 123. He stated that he had not agreed that the Respondents could withhold rent for January 2019 as a result of such a problem. He said that he had installed a heated towel rail in the bathroom of the Property in early March 2019. He stated that he viewed this as an improvement rather than a repair, as there was no radiator in the bathroom at the commencement of the parties' tenancy agreement. The Applicant referred to the extract from guidance from Shelter Scotland which he had submitted, (document 123) regarding the definitions of repair and improvement. The Applicant stated that he had pursued the rent due in January 2019 from March 2019 and referred to messages between the parties. He stated that he had originally told the Respondents to keep the rent as a joke only. He referred again to the fact that he had been pursuing those rental monies from March 2019 and that the Respondent Mrs Timoney, in messages at that time, stated that she could not pay those monies as she had been off work, due to sickness, for six weeks. The Applicant reiterated that he sought payment of the rent of £450.00 for January 2019.

12. Regarding the rent due in October 2020, when the Respondents left the Property, the Applicant stated that no notice had been given, by the Respondents, of when they were leaving the Property. He said that nevertheless he only sought payment for the 11 days of that month during which the Respondents occupied the property. The Applicant also stated that the Respondents had not returned the keys to the Property directly to him, their friend Samantha having done this.
13. The Applicant also commented that the Respondents had viewed the Property in December 2016 prior to taking entry and questioned why the Respondents had entered into the tenancy agreement if they considered that there were problems with the Property at that time.
14. The Applicant also acknowledged that a Rent Penalty Notice had been served by Glasgow City Council on 30th November 2018. He said that he had forgotten to renew his Landlord Registration with Glasgow City Council but had done so as soon as the Notice was intimated, in December 2018.
15. The Respondent Mrs Timoney gave evidence on behalf of both Respondents. Mr Timoney stated that he was in agreement with all of the evidence that Mrs Timoney would give. Mrs Timoney also stated that she relied on the terms of the representations and documentation which she had submitted in advance of the CMD and Hearing.
16. In connection with the February and March 2018 rent issue Mrs Timoney stated that she and her husband had no knowledge of any offer to pay an extra £50.00 per month. She stated that the Applicant had referred them to a carpet company in Maryhill, where the Applicant knew the manager. She stated that the manager spoke to the Applicant, by telephone, whilst they were there and said that he would not be able to buy carpets for the price that he wanted. She stated that she then went to Jem Carpets and organised the carpets for her daughter's bedroom and the Respondents' bedroom. She stated that it was

agreed with the Applicant that the monies for the carpets would be deducted from the rent.

17. Regarding the January 2019 rent, Mrs Timoney stated that the Respondents had not been given terms and conditions for the tenancy agreement. She stated that the boiler had been broken down every few months and that they had numerous days with no heating and no hot water and she had to travel to her mother's home in Paisley to bath her children. She stated that it all just got too much, there were so many issues and she stopped paying the rent. She agreed that she had not given the Applicant written confirmation that she was withholding rent. She stated that the reason why the Respondent's didn't tell the Applicant that they were withholding rent was that it was difficult to get responses from him. Mrs Timoney acknowledged that the Applicant had installed a heated towel rail in the bathroom of the Property in early March 2019
18. Mrs Timoney also stated that, in June 2019, she was contacted by Glasgow City Council who said that they were proceeding with a case against the Applicant in respect of the Repairing Standard. She stated that this concerned ventilation, a leaking radiator in the bedroom and smoke, heat and carbon monoxide detection.
19. Mrs Timoney said that when she had discussed problems in the Property with the Applicant, they had previously spoken of the possibility of the Respondents moving to another property let by him. She said that during discussions about the Respondents possibly leaving the Property, the Applicant had stated that 2 months' notice of termination of the parties' tenancy agreement would ordinarily be required.
20. In relation to the October 2020 rent, Mrs Timoney said that the boiler had not been working again. She said that she had been messaging the Applicant about this and nothing had been done. She stated that she didn't know when she and her husband were moving out to their new house. Their lawyer wasn't able to tell them. She acknowledged that they had not given notice of a date of departure to the Applicant. She stated that she gave the keys to her friend Samantha, whom she thought was going to take on the tenancy. Mrs Timoney acknowledged that the Respondents had not paid any rent to the Applicant for their occupation of the Property in October 2020.

Findings in Fact and Law

21. The carpets within two bedrooms in the Property required to be replaced in early 2018. This was agreed by the parties. They were replaced by the Respondents in February and March 2018, and the Respondents deducted monies from their monthly rent for those months in respect of the costs for the carpets.

22. The Respondents withheld rent, in the sum of £450.00, in the month January 2019. They did not notify the Applicant that they were doing so and did not intimate to him any reason for non-payment..
23. The Respondents left the Property, to move to their new home, on 11th October 2020. They did not provide the Applicant with notice of the date of their move and did not pay any rent monies for that month.
24. The Respondents were entitled to deduct the monies they had paid for carpets from the rent to be paid in the months in February and March 2018. The carpets replacement constituted necessary repairs in terms of the parties' tenancy agreement. The Applicant is not entitled to payment in respect of the shortfalls in rent for those months. These occurred due to the deductions for the carpets costs which were necessary for the Applicant to fulfil his obligations in terms of the parties' tenancy agreement.
25. The Respondents should have notified the Applicant of their action in withholding rent, and specified their reason for doing so, in January 2019. In not doing so they acted in breach of their obligations under the parties' tenancy agreement. The Applicant is accordingly entitled to payment of rent, of £450.00, for the month of January 2019. .
26. The Respondents, in not providing notice to the Applicant in respect of their date of departure from the Property, and not paying rent to the Applicant in October 2020, did not fulfil their obligations under the parties' tenancy agreement. The Applicant is accordingly entitled to payment of the sum of £162.00, being the restricted rental amount due for the period 1st to 11th October 2020.
27. The Applicant is entitled to payment from the Respondents of the total sum of £612.00.

Reasons for Decision

28. Section 16 of the Housing (Scotland) Act 2014 provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3)Part 1 of schedule 1 makes minor and consequential amendments.”

29. Accordingly, the Tribunal now has jurisdiction in relation to claims by landlords, such as the Applicant, against tenants, such as the Respondents, for payment under a tenancy agreement, such as the parties’ tenancy agreement.
30. The Tribunal considered all of the documentary and oral evidence and submissions.
31. Both the Applicant and the Respondent Mrs Timoney stated that they had agreed that carpets in two of the bedrooms should be replaced in early 2018. Having considered all of the evidence, in particular the parties’ oral evidence, the Tribunal found, on a balance of probabilities, that it was initially intended that the Applicant would make payment for the carpets, at a carpet store in Maryhill, Glasgow, but that this arrangement did not proceed and the Respondents organised the replacement and paid for the carpets. The Tribunal further found, on a balance of probabilities, that there were carpets in those bedrooms at the commencement of the parties’ tenancy. The Applicant had a duty to repair the carpets in terms of the parties’ tenancy agreement and the Tribunal found that the deductions were for the necessary repairs. The Tribunal therefore determined that the Respondents were entitled to deduct the cost of the carpets from the rent due in the months February and March 2018. The Tribunal rejected the Applicant’s evidence that he did not have to replace the carpets as he had a contractual obligation in this regard and, moreover, the parties had agreed that he would do so.
32. The Respondents acknowledged that they had not provided notice to the Applicant that they were withholding rent, nor specification of the reason for doing so, in January 2019. The Tribunal found that the Respondents had a duty in terms of the parties’ tenancy agreement to notify the Applicant that they were withholding rent, and a reason for doing so, but they did not fulfil this duty. The Tribunal rejected the Respondents’ evidence that they had not told the Applicant that they were withholding rent as it was difficult to get responses from him. Both parties had lodged copies of various messages between the parties at various times which demonstrated that the parties were able to communicate without difficulty. Having considered all of the evidence, in particular the parties’ messages as well as their oral evidence, the Tribunal found, on a balance of probabilities, that, in March 2019, the Applicant had installed a heated towel rail in the bathroom as an improvement to the Property as there had not previously been a radiator in that room. The Tribunal further found, on a balance of probabilities, that notwithstanding communications between the parties, in which there was a suggestion from the Applicant that the rent for January 2019 was to be disregarded, the Applicant pursued, and sought payment for, the rent from March 2019. The Tribunal further found, on a balance of probabilities, that, when the Applicant sought payment, the Respondents stated that they were not in a financial position to pay, and, accordingly, acknowledged that the rent was due. The Tribunal therefore determined that the Applicant is entitled to recover the monies, of £450.00, for rent due in January 2019.

33. The Respondents acknowledged that they had not given the Applicant notice of when they were moving from the Property and that the Applicant had previously spoken to them regarding a requirement for 2 months' notice. The Respondents had a duty to give such notice and the Tribunal found that the Applicant would ordinarily be entitled to seek payment of rent due for a 2 months' notice period but had not done so, all in terms of the parties' tenancy agreement. Having considered all of the evidence, in particular the oral evidence of the parties, the Tribunal found, on a balance of probabilities, that the Respondents had left the Property without giving notice to the Applicant, in breach of their obligations under the tenancy agreement. The Tribunal further found that the Respondents had not paid any rent to the Applicant for their occupation of the Property in October 2020. Having considered all of the evidence, in particular the copy messages between the parties which had been submitted, the Tribunal also found, on a balance of probabilities, that the Respondents did not notify the Applicant that they were withholding rent due in October 2020 in respect of any issue with the boiler, and had not fulfilled their duty in terms of the parties' tenancy agreement in this regard. The Tribunal accordingly determined that the Applicant is entitled to recover the restricted rental amount sought, of £162.00, for the period of 11 days during which the Respondents occupied the Property in October 2020.

Decision

34. Therefore the Tribunal determined to make an order for payment of the sum of £612.00 to the Applicant by 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.

G McWilliams

6th April 2021

Legal Member

Date

Gerald McWilliams

