



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/21/1415

Re: Property at 295 Old Edinburgh Road, Uddingston, G71 6AR (“the Property”)

Parties:

Umali Limited, 77 Victoria Street, Larkhall, ML9 2BL (“the Applicant”)

Mr Jason McKinlay, Ms Clare Bauldie, Stonymeadow Cottage, Stonymeadow Rd, Blantyre, G72 9UE; 39 Abercrombie Crescent, Ballieston, Glasgow, G69 7SR (“the Respondents”)

Tribunal Members:

Neil Kinnear (Legal Member) and Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it make an order for payment by the Respondents jointly and severally to the Applicant of the sum of £10,000.00.

Background

This was an application for a payment order dated 10th June 2021 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in its application payment of arrears in rental payments in relation to the Property from the Respondents, and provided with its application copies of the private residential tenancy agreement and rent arrears statement.

The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and

the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondents have been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 2nd July 2021, and the Tribunal was provided with the executions of service.

Case Management Discussions were held on 11th August and 6th October 2021 by Tele-Conference. The Tribunal prepared detailed Case Management Discussion notes which fully narrate what took place. At the conclusion of the Case Management Discussion of 6th October 2021, it appeared that the parties had reached a resolution and that the Respondents would enter into a repayment plan which it was anticipated would resolve this application.

The Applicant confirmed that the Respondents had repaid all of the rent arrears accrued until the First Respondent, Miss Bauldie, quit the Property. However, on regaining possession, the Applicant asserted that the First Respondent has caused substantial damage to the Property which required it to expend £13,773.71 in repairs after deduction of the tenant's deposit, for which cost the Applicant asserted the First Respondent was liable in terms of the lease agreement as tenant, and the Second Respondent was liable in terms of the lease agreement as guarantor.

By e-mail to the Tribunal of 30th November 2021, the Applicant asked the Tribunal to amend its application to remove the claim for rent arrears, and to substitute a claim for damages for the sum of £13,773.71 against both Respondents, and provided substantial further documentation in support of its claim confirming that the works had been completed and providing vouching of the costs of those works.

A continued Case Management Discussion was held at 10.00 on 13th December 2021 by Tele-Conference. The Applicant's director, Rok Lasan, participated, and the Applicant was not represented. The Respondents did not participate, and were not represented.

The Tribunal was satisfied that the requirements of giving notice had been duly complied with, and proceeded with the application in terms of Rules 17 and 29 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Mr Lasan asked the Tribunal to consent to the Applicant's amendment, and also to allow the application to be amended to specify the First Respondent's new address as 39 Abercrombie Crescent, Glasgow, G69 7SR. The amendment intimated by e-mail on 30th November 2021 introduced a new issue, and accordingly might only be made with the consent of the Tribunal in terms of Rule 14(1) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Having considered matters, the Tribunal gave its consent to the amendments. Although the amendment intimated by e-mail on 30th November 2021 raised an entirely separate ground of claim against the Respondents, if the Tribunal were to have refused the amendment, the Applicant would have been entitled to simply raise the claim as a fresh application. Having regard to the overriding objective to deal with

proceedings justly, and in particular to seek informality and flexibility in proceedings and to avoid delay, all in terms of Rule 2 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, the Tribunal considered it to be just to allow the amendments.

Having done so, the Tribunal required to give the Respondents an opportunity to make written representations in response to the amendment intimated by e-mail on 30th November 2021 by a date which was not less than 14 days from the date when intimation of the amendment was served in terms of Rule 14(2) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

Although the Tribunal did e-mail copies of the proposed amendment to the Respondents, in the absence of any response, and in circumstances where the First Respondent had quit the Property, the Tribunal wished to be satisfied that the Respondents were aware of the amended claim which they faced after the amendment was allowed. Further, the Tribunal required to give them an opportunity to respond to the amendment which had been made.

Accordingly, the Tribunal allowed the Respondents the opportunity to provide written responses to the amendment by 5pm on 7th January 2022, and intimated the amendment, all the material lodged by the Applicant since 6th October 2021, and the date of the further continued Case Management Discussion on both Respondents, both by e-mail, and by hard copy to their respective addresses.

In these circumstances, the Tribunal considered that it was in the interests of justice to further continue the continued Case Management Discussion to allow the Respondents the opportunity to provide written responses to the amendment by 5pm on 7th January 2022.

The Tribunal also considered that it would be helpful for the Applicant to lodge photographs of the completed work carried out to the Property for which it claimed against the Respondents, together with all relevant receipts.

A continued Case Management Discussion was held at 10.00 on 14th March 2022 by Tele-Conference. The Applicant's directors, Mr Lasan and Mr Murray, participated, and the Applicant was not represented. Both Respondents participated, and were not represented.

Both Respondents confirmed to the Tribunal that they had received intimation of the amendment and of all the material lodged by the Applicant since 6th October 2021. The Respondent confirmed that they accepted that the flooring in the kitchen, and the flooring in the small toilet leading off from the kitchen, required to be replaced at their expense, and that the kitchen sink also required to be replaced at their expense. They denied that the rest of the remedial work claimed was damage recoverable from them in terms of the lease agreement, and also did not accept the costs sought by the Applicant in respect of the three items they did accept liability for, on the basis that these costs had been greatly inflated.

It was clear that there were substantial disputes on the facts between the parties, which the Tribunal required to hear evidence upon in order for it to resolve those. For that reason the Tribunal set a Hearing, and advised the parties about the procedures involved in that. The parties all confirmed that a Video-conference Hearing was desirable.

The Hearing

A Hearing was held at 10.00 on 9th May 2022 by Video-Conference. The Applicant's directors, Mr Lasan and Mr Murray, participated, and the Applicant was not represented. Both Respondents participated, and were not represented.

The Tribunal discussed the areas of dispute between the parties with them, during which discussion it became obvious that the Respondents accepted responsibility for a significant amount of the sum sought by the Applicant, albeit not the full amount.

Thereafter, the Tribunal adjourned the Hearing twice for brief periods in order to allow the parties an opportunity to discuss what amount of money was acceptable to each. At the conclusion of those adjournments, parties reached agreement of a settlement at a figure of £10,000.00, which figure the Tribunal should use in its order.

Statement of Reasons

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

"First-tier Tribunal's jurisdiction

- (1) In relation to civil proceedings arising from a private residential tenancy—
- (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than—
- (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution."

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The Tribunal considered the terms of the private residential tenancy agreement, the evidence provided, and the submissions made by the parties, and was satisfied that these disclosed a sum due of £10,000.00 in respect of remedial work required to the Property and for which the Respondents are responsible in terms of the lease agreement.

Decision

In these circumstances, the Tribunal made an order for payment by the Respondents jointly and severally to the Applicant of the sum of £10,000.00.

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.

Neil Kinnear

9th May 2022

Legal Member/Chair

Date