



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/0399

Re: Property at 47 3R Lyon Street, Dundee, DD4 6RA (“the Property”)

Parties:

Mr James Murray Calder, 28 Mercer Court, Innerleithen, EH44 6QB (“the Applicant”)

Mr Kayne Anderson, 61 Rodd Road, Dundee, DD4 7DP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £3842.95

Background

1. By application dated 10 February 2022 the Applicant’s representatives Rockford Properties, Dundee, applied to the Tribunal for an order for payment in respect of alleged rent arrears and damage to the property arising from the Respondent’s occupation of the property. The Applicant’s representatives submitted copy invoices, rental account, lease, inventory, move out report and trace report in support of the application.
2. Following further correspondence between the Applicant’s representatives and the Tribunal, on 5 May 2022 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was given to the Respondent by Sheriff Officers on 24 May 2022.

4. A CMD was held by teleconference on 19 July 2022. The Applicant was represented by Ms Young of the Applicant's representatives. The Respondent did not attend nor was he represented. The Tribunal continued the CMD to a further CMD for the Applicant's representatives to provide further information and issued a CMD note.
5. By email dated 9 August 2022 the Applicant's representatives submitted further documentation and photographs in support of the application.
6. By email dated 11 August 2022 the Respondent submitted written representations to the Tribunal.
7. By email dated 5 September 2022 the Respondent requested confirmation of the dial-in details for the CMD on 6 September 2022. These were provided to the Respondent by the Tribunal Clerk.

The Case Management Discussion

8. A CMD was held by teleconference on 6 September 2022. The Applicant did not attend but was represented by Ms Young of Rockford Properties, Dundee. The Respondent did not attend nor was he represented. The Tribunal delayed the commencement of the CMD until 10.05 to give the Respondent an opportunity to attend. The Tribunal being satisfied that the Respondent was aware of the date and time of the CMD and had been provided with the dialling in instructions determined to proceed in his absence.
9. The Tribunal referred Ms Young to the letter sent by the Applicant to the Respondent dated 28 March 2021 and submitted to the Tribunal by email on 9 August 2022. Ms Young explained that this provided details of how the historic rent arrears had accrued prior to her firm taking over management of the property. She said that although the arrears were in fact greater than the amount claimed the Applicant was in the circumstances prepared to restrict the historic arrears to that claimed namely £1350.00 Therefore after taking account of the final balance due for the period to the end of the tenancy on 7 September 2021 and after deduction of the deposit repaid by Letting Protection Services Scotland, Ms Young submitted that the final balance of rent due by the Respondent was £1439.75.
10. Ms Young referred the Tribunal to her previous submission at the CMD on 19 July and said that the oven at the property had been new at the commencement of the Respondent's tenancy and would have been expected to have lasted at least five years but had to be replaced due to the damage caused by the Respondent. She said she accepted that some reduction from the cost of replacement of £260.38 was appropriate and suggested that £200.00 was a fair amount to charge.
11. With regards to the repair to the bathroom door, Ms Young said that it was a hole the size of a fist and could not have been caused accidentally. She referred

the Tribunal to the invoice in the sum of £46.00 from W.D. Property Maintenance dated 23/9/21.

12. Ms Young confirmed the property had been newly painted when the Respondent took occupation in June 2020. She explained that it required to be totally repainted following the Respondent removing from the property in September 2021. She referred the Tribunal to the photographs submitted and to the move out report. Ms Young submitted that it would be reasonable for a property to require to be repainted after a period of five years but not after fifteen months. She confirmed that the total cost incurred was £950.00 and that in the circumstances allowing for reasonable wear and tear a claim for £800.00 was reasonable.
13. Ms Young explained that the carpets at the property had been between two and three years old at the commencement of the tenancy and had been in excellent condition. At the end of the tenancy they had to be replaced due to having burn marks and stains. She said she accepted there should be a deduction from the cost of replacement which was £1173.00 and suggested that a sum of £800.00 was reasonable.
14. Ms Young referred the Tribunal to the invoice from Thistle Contract Cleaning Ltd dated 21 October 2021 amounting to £757.20 and to the photographs submitted. She suggested that in the circumstances it was reasonable that the Applicant be reimbursed for the total cost.
15. Ms Young referred the Tribunal to the invoice from Care Electrical Contractors for the cost of replacing all the panel heaters in the property amounting to £924.88. She said that although the heaters were not new at the commencement of the tenancy, they all had been in working order but were not working at the end of the tenancy. Ms Young said that she accepted that there could be some deduction from the cost of replacement applied by the Tribunal. The Tribunal queried if there was any evidence to show that the heaters had been deliberately damaged by the Respondent. Ms Young confirmed there was not. The Tribunal suggested that the Heaters appeared to be quite old and therefore it was possible they had reached the end of their useful life. Ms Young did not dispute that was possible.

Findings in Fact

16. The parties entered into a Private Residential tenancy that commenced on 1 June 2020 and ended on 7 September 2021.
17. The rent was £390.00 per calendar month.
18. During the course of the tenancy the Respondent accrued rent arrears.
19. The Applicant has restricted his claim for arrears to £1439.75.

20. The Applicant was required to replace the oven at the property with a new oven at a cost of £260.38.
21. The Applicant incurred a charge of £46.00 to replace a hole in the bathroom door caused non-accidentally during the Respondent's occupation of the property.
22. The Applicant incurred a cost of £950.00 for redecorating the property after the end of the tenancy.
23. The property was newly painted at the commencement of the tenancy.
24. The Applicant incurred a cost of £1173.00 to replace damaged carpets at the property after the end of the tenancy. The carpets were in good condition and about two years old at the commencement of the tenancy.
25. The property was not left in a clean and tidy condition at the end of the tenancy and the Applicant incurred a charge of £757.20 to have rubbish removed and the property cleaned.
26. The Applicant incurred a cost of £924.88 to replace the panel heaters and repair a light fitting at the property however there was no evidence to suggest that the heaters or the light fitting had been damaged as a result of any wilful or negligent acts on the part of the Respondent.

Reasons for Decision

27. The Tribunal was satisfied from the written representation and documentary evidence together with the oral submissions at the CMD that the parties entered into a Private Residential Tenancy agreement that commenced on 1 June 2020 and ended on 7 September 2021 at a rent of £390.00 per calendar month. The Tribunal was also satisfied that during the period of the tenancy the Respondent accrued substantial rent arrears that the Applicant has restricted his claim to £1439.75.
28. The Tribunal was also satisfied that the Applicant incurred the cost of replacing the oven which had been damaged during the Respondent's occupancy of the property. Given that the oven was new at the commencement of the tenancy the Tribunal was satisfied that a charge of £200.00 towards the replacement cost was reasonable. The Tribunal was also satisfied that the cost of repairing the bathroom door in the sum of £46.00 should be met by the Respondent as this did not appear to be accidental damage. The Tribunal was also satisfied that the Respondent should be liable for a proportion of the cost of redecorating the property and given that it had been newly painted at the commencement of the tenancy considered that a charge of £800.00 was reasonable. The Tribunal also considered that it was reasonable that the Respondent should be liable for a contribution towards the cost of the new carpets at the property. Given that the carpets were not new at the commencement of the tenancy but might reasonably have been expected to last for several years more before needing

to be renewed the Tribunal considered it reasonable that the Respondent should pay £600.00 towards the cost. The Tribunal was satisfied that the Applicant had incurred the charge of £757.20 for the removal of rubbish and the cleaning of the property solely as a result of the condition it was left in by the Respondent. It was therefore reasonable that the Respondent should meet this cost.

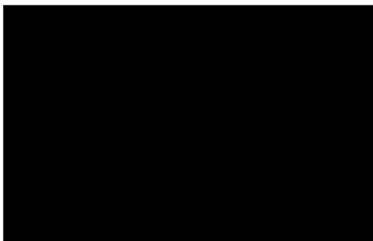
29. The Tribunal was not satisfied that the Respondent should be held liable for the cost of replacing the panel heaters at the property or replacing the broken light switch. The Applicant did not provide any evidence to suggest that the heaters had been damaged by the Respondent. The heaters appeared to be quite old and it was possible they had reached the end of their lifespan. The Tribunal therefore refused this part of the Applicant's claim.
30. The Tribunal having carefully considered the written and oral submissions and being satisfied it had sufficient information before it to make a decision without the need for a hearing determined that the total amount due by the Respondent to the Applicant amounted to £3842.95.

Decision

31. The Tribunal finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £3842.95.

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.



Graham Harding
Legal Member/Chair

6 September 2022
Date