



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/23/0509

Re: Property at 22 Ardle Avenue, Kilmarnock, KA1 3PU (“the Property”)

Parties:

Miss Sakina Tumi, 19 Emmanuel Road, London, SW12 0PB (“the Applicant”)

Miss Christine Johnstone, c/o 136 Hurlford Road, Kilmarnock, KA1 3WL (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing. The Tribunal refused the application.

Background

By application, dated 14 February 2023 and received by the Tribunal on 17 February 2023, the Applicant sought an Order for Payment against the Respondent, her former tenant of the Property. The sum sought was £100.

The Applicant stated that the Respondent had left the Property without returning it to the state it was in February 2020, when she moved in. There were holes in a wall where a television had been fixed to it, bad paintwork on walls that were still wet when inspected, and evidence of smoking in the Property, which was not permitted under the lease.

The Respondent had been due to vacate the Property on 24 February 2023 at 1pm. The Applicant’s mother had arrived at that time, but the Respondent was not ready to leave. The Applicant’s mother had carried out an initial inspection and had told her that on the surface things seemed fine, but that there were one or two things that could not be signed off. The Respondent had hounded the Applicant every day

asking for her deposit back and, on 3 March 2023, the Applicant had, in good faith, agreed to its release, as the rent had been paid on time and the Respondent had been nice. Later that day, however, the Applicant's mother returned to the Property and could smell the smoke. This had not been evident on 24 February due to the smell of fresh paint. Her mother took pictures of the holes in the wall and of the wall, which had not been completely papered. The Respondent had painted white over grey and, now that it had dried, the grey was showing through again. The issue with the wallpaper had not been detected at the inspection of 24 February as it had been covered by furniture.

The Applicant called the tenancy deposit company immediately, but the deposit had already been paid out to the Respondent. She had then contacted the Respondent to ask her to pay back £100, but had received an abusive text telling her not to contact the Respondent again.

The Applicant provided the Tribunal with details of the costs of materials required to redecorate the affected areas. They amounted to £100.26.

On 10 May 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 31 May 2023. The Respondent did not make any written representations to the Tribunal.

Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the morning of 13 June 2023. The Applicant was present. The Respondent was not present or represented.

The Applicant told the Tribunal that the Respondent had a free-standing faux-marble fire surround and mantelpiece in the living room. She had papered the wall but had omitted to paper the area behind the fire surround. The Television had been fixed to the wall above the fire surround. The issue mentioned by the Applicant's mother following her inspection on 24 February had been that there was wet paint on a wall where the Respondent had redecorated.

Due to work commitments and the fact that she was reliant on a lift to the Property, the Applicant's mother had not reinspected the Property before 3 February. The Applicant had agreed to the release of the tenancy deposit because the relationship between the Parties had been excellent throughout the tenancy, and the Applicant had no reason to suspect that the Respondent might not leave the Property in good order.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

The Tribunal noted that the sum sought by the Applicant was modest, being for materials only and that there might have been practical difficulties for her mother in visiting the Property again before the deposit was released to the Respondent, but the issue of wet paint had been noticed on 24 January and the Applicant was not, at that stage, prepared to sign off on the final inspection. She had a week after that to arrange for someone to carry out a final check, and, as there was at least that one item picked up at the inspection on 24 February, the Tribunal would have expected her to do that, as a precaution, before agreeing that the deposit could be returned to the Respondent without any deduction. Accordingly, the Tribunal decided to refuse the application.

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.

George Clark

Legal Member/Chair

13 June 2023
Date