



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

Chamber Ref: FTS/HPC/CV/22/2066

Re: Property at 19C Afton Road, Stevenston, KA20 3HA (“the Property”)

Parties:

Europe & Jersey Estates Ltd, 30 East Main Street, Darvel, KA17 0HP (“the Applicant”)

Mr David Alan Malone, 11 Mains Road, Beith, KA15 2AF (“the Respondent”)

Tribunal Members:

Jim Bauld (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order should be granted for payment in the sum of ONE THOUSAND , SEVEN HUNDRED AND FORTY FIVE POUNDS AND SIXTY FOUR PENCE (£1.745.64)

Background

1. By application dated 28 June 2022, the applicant sought an order under section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
2. On 21 July 2022, the application was accepted by the Tribunal and referred for determination by the tribunal

3. A Case Management Discussion (CMD) took place on 30 September 2022. The applicant was represented by their director. The respondent was neither present nor represented
4. At the conclusion of the case management discussion the tribunal issued a decision granting a payment order in favour of the applicant.
5. By email dated 15 October 2022, the respondent indicated that he wished to “appeal” the decision. In the email, the respondent indicates the he wishes to dispute the evidence presented by the applicant to the tribunal. He indicated he was unaware of the date of the tribunal hearing. He provided his new address
6. The respondent’s email was sent to the applicants for their consideration and response. It was indicated to them that the tribunal member intended to treat the correspondence from the respondent as a request to recall the decision in terms of rule 30 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the procedure rules”) rather than as a formal appeal in terms of section 46 of Tribunals (Scotland) Act 2014
7. The tribunal issued a further decision recalling the initial order and remitting the application to a fresh CMD
8. A further CMD was set to take place on 31 March 2023. Intimation of that CMD was sent to both parties
- 9. The further CMD of 31 March 2023**
10. The Case Management Discussion (CMD) took place on 31 March 2023. via telephone case conference The applicant was represented by Mr Kenneth

Johnstone, one of their directors. The Respondent did not attend and was not represented. The tribunal did not commence the CMD until approximately 10.10 a.m. and it concluded at approximately 10.20 a.m.

11. The tribunal asked various questions with regard to the application and the documents lodged in support of it. The applicant's representative confirmed that he wished the tribunal to grant the order sought in the application

12. In response to questions from the tribunal with regard to the cost of the replacement door, which had been shown in the application at £350, the applicant's representative provided full details of the costs incurred. He indicated that the total cost including the door, the door handles, the relevant double glazing unit and the labour for the installation of the door had amounted to £668.62,. He confirmed the applicant had recovered £300 from the deposit scheme and thus the amounts actually expended in respect of the door was £368.62. The representative accepted that the claim which had been lodged in respect of this item was limited to £350 and could not be amended without information to the respondent.

13. The applicant's representative indicated that they became aware of the water damage to the property in April 2022 when it has been reported by a neighbour. He rejected the claim from the respondent that the boiler had exploded because of a fault in the boiler. He explained that the boiler had exploded because the respondent had left the property for approximately 14 days, leaving the boiler switched on. This caused a build-up of pressure with increasing water temperatures which caused the boiler to explode which led to the water damage. It was the applicant's representative that this was entirely caused by the fault and negligence of the respondent.

14. The representative asked that the tribunal grant the order for the sum claimed of £1745.64

Findings in fact and law

15. The Applicant and the Respondent as respectively the landlord and tenant entered into a tenancy of the property which commenced on 26 November 2021

16. The tenancy was a private residential tenancy in terms of the Act

17. The agreed monthly rental was £350

18. The tenancy had ended on 15 June 2022

19. Rent arrears had accrued at the end of tenancy amounting to £591.64

20. The applicant had incurred further costs after the conclusion of the tenancy. These costs required to be incurred as result of the tenant's conduct and neglect of the property

21. The costs included the removal of furniture from the property and, the cleaning of the property (£98), plumbing repairs (£144), electrical repairs (£117), payments to top up the utility supplies of electricity (£25), replacement of the front door (initially estimated at £350) and redecoration (£420). These further costs amounted in total to £1,154.

22. Appropriate accounting had been provided for all sums claimed with the application to the tribunal and an invoice for the total amount of £1745.64 had been sent to the respondent on 28 June 2022

23. The respondent is accordingly liable to pay to the applicant the sum of £1745.64 in respect of rent arrears and sundry costs

Reasons for Decision

24. The tribunal accepted the unchallenged evidence, both oral and documentary, of the applicant regarding the outstanding sums. The tribunal noted that the respondent had failed to engage with the applicant after the conclusion of the tenancy.

25. The respondent had also failed to fully engage with the tribunal in respect of two separate case management discussions despite having ample opportunity to do so.

26. The tribunal was satisfied that the various cleaning and repair works were required owing to damage or neglect caused by the tenant during his occupation

27. The tribunal also determined that a final decision could be made on this matter at the case management discussion without referring the matter to a full hearing. The tribunal accordingly exercises the power contained within rule 17(4) of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The tribunal are satisfied that all parties were given reasonable notice of the date, time and place of the case management discussion and were given ample opportunity to provide supporting evidence in respect of any assertions made.

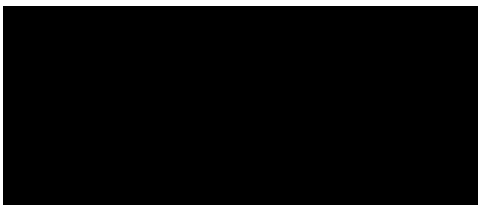
28. The tribunal accordingly determined that it was not necessary to fix a full hearing and that the matter could be decided at the case management discussion

Decision

The order for payment of the sum of £1745.64 is granted

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.



31 March 2023

Legal Member/Chair

Date