



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/20/0540

Re: Property at 37 Station Drive, Prestwick, KA9 1HQ (“the Property”)

Parties:

Mr Simon Donoghue, 23 Paragon Drive, Motherwell, North Lanarkshire, ML1 3FY (“the Applicant”)

Ms Marie Kay, 4F Shawbank Place, Kilmarnock, KA1 3HH (“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 in the sum of £3971.75

Background

1. By application dated 13 February 2020 the Applicant’s representative Denise Gillespie applied to the Tribunal for an order for payment by the Respondent in respect of alleged unpaid rent and damage arising from the Respondent’s tenancy of the property. The Applicant’s representative submitted a copy of a tenancy agreement, Notice to Leave, rent payments, correspondence between herself and the Respondent, copy invoices and receipts and photographs in support of the application.
2. By Notice of Acceptance dated 12 May 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned to take place by teleconference.

3. Intimation of the Case Management Discussion was sent to the Applicant's representative by post on 3 July 2020 and was served on the Respondent by Sheriff Officers on 6 July 2020.

The Case Management Discussion

4. A Case Management Discussion was held by teleconference on 5 August 2020. It was attended by the Applicant's representative Mrs Gillespie. The Respondent did not attend and was not represented. The Tribunal being satisfied that proper intimation of the Case Management Discussion had been given to the Respondent determined to proceed in her absence in accordance with Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.
5. Mrs Gillespie explained that although initially the property had been let to the Respondent without a written tenancy agreement as it had been on the basis that the Respondent had been a friend, ultimately a written Private Residential Tenancy Agreement had been drawn up. The rent was £550.00 per calendar month. The rent had for a time been reduced to £530.00 per month as the Respondent was paying a gas service agreement of £19.99 per month but she had cancelled this when she had been sent the Notice to Leave. The rent had then again increased to £550.00.
6. Mrs Gillespie said that at one point she had agreed to waive some rent in exchange for the Respondent leaving the blinds she had fitted and the carpets she had laid but as the Respondent had removed the blinds and the carpets the Applicant was now seeking all the rent for the period from September to 25 January which amounted to £2652.05.
7. Mrs Gillespie referred the Tribunal to her written submissions and the further heads of claim in respect of rubbish bags - £3.97, repairs to window frames, stairs walls and paintwork - £41.02, repairs to the bathroom in respect of sealant, broken toilet seat and halogen lamps- £47.58. Mrs Gillespie referred the Tribunal to the receipts submitted in support of these items.
8. Mrs Gillespie explained that after the Respondent had left the keys to the property were left outside the property. Some were bent and others did not fit the locks. In order to leave the property, secure she arranged for the locks to be changed at a cost of £95.00.
9. Mrs Gillespie said she incurred a cost of £5.99 in respect of cleaning materials but had not charged for her or her husband's time spent cleaning the property.
10. Mrs Gillespie said that when the Respondent moved in the kitchen appliances were all less than one year old and in good working order. The Respondent had replaced the oven, hob and microwave but had then removed these items when she left. It had therefore been necessary to purchase new items at a cost of £540.85 including the cost of repairing the broken integrated washing machine door.

11. Mrs Gillespie explained that the Respondent had removed the blinds from the conservatory. The cost to replace these would have been £486.00 but the property had been sold without the blinds being replaced. The Tribunal indicated that if the Applicant had not incurred this cost then the Respondent could not be held liable for it.
12. Mrs Gillespie advised the Tribunal that the Respondent had laid a carpet on the sitting room floor over the existing laminate floor and the gripper edging was nailed to the laminate damaging it. When the Respondent left the property, she had removed the carpet and therefore it had been necessary to replace it with a new carpet at a cost of £573.39.
13. Mrs Gillespie explained that shortly after moving into the property the Respondent had asked if she could replace the shed in the garden. This was agreed. When the Respondent removed from the property, she removed the shed. The cost to replace the shed would have been £400.00 however Mrs Gillespie said the property had been sold without the shed being replaced. The Tribunal indicated that as no cost had been incurred by the Applicant it was difficult to see how the Respondent could be liable.
14. Mrs Gillespie having taken account of the Tribunal's comments regarding the blinds and the shed submitted that the Applicant's claim amounted to £3971.75 and sought an order in that amount.

Findings in Fact

15. The parties entered into a Private Residential Tenancy that endured from 1 June 2018 until 25 January 2020 at a rent of £550.00 per calendar month.
16. The Respondent accrued rent arrears from 1 September 2019 to 25 January 2020 amounting to £2652.05.
17. The Applicant incurred costs for removal of rubbish amounting to £3.97.
18. The Applicant incurred decorating costs as a result of damage to the property during the Respondent's tenancy amounting to £41.02.
19. The Applicant incurred costs for repairs to the bathrooms and replacing light bulbs amounting to £47.58 as a result of damage to the property during the Respondent's occupancy.
20. The Applicant incurred a cost of £95.00 for replacement locks following the Respondent vacating the property.
21. The Applicant incurred a cost of £5.99 in respect of cleaning materials required to clean the property following the Respondent vacating the property.

22. The Applicant incurred a cost of £540.35 in respect of replacing kitchen equipment removed by the Respondent and repairs to the washing machine integrated door in the property.
23. The Applicant incurred a cost of £12.00 in respect of brackets to re-fit existing window blinds previously removed by the Respondent during the tenancy.
24. The Applicant incurred a cost of £573.79 in respect of replacing a carpet removed by the Respondent on vacating the property.

Reasons for Decision

25. The Tribunal was satisfied from the oral submissions of the Applicant's representative, Mrs Gillespie, and the written submissions and documentary evidence submitted that as a result of the actions of the Respondent in failing to pay rent from September to January and by removing carpet, blinds and kitchen appliances as well as leaving the property in need of cleaning and repair that the costs incurred by the Applicant should be recovered from the Respondent. The Tribunal was satisfied that the Respondent was in breach of the terms of the tenancy agreement entered into between the parties.
26. The Tribunal was not satisfied that the Applicant could legitimately claim for the cost of replacing the conservatory blinds or the shed as the property had been sold without these being replaced.
27. Although the Applicant's representative had agreed to waive payment of some rent this had been on the understanding that the Respondent would leave the blinds and carpet she had fitted in the property. As she had removed these it was reasonable that the rent then became due.
28. The Tribunal was satisfied from the oral evidence of Mrs Gillespie that the kitchen equipment was reasonably new and in good working order at the commencement of the tenancy. Whilst it is possible that the oven, hob and microwave all broke during the tenancy and were replaced at the Respondent's expense, once fitted to the property they would become the Applicant's property and may have been subject to a claim for tenant's improvements. That did not justify their removal by the Respondent.

Decision

29. Having carefully considered the written representations, documentation and oral submissions the Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £3971.75

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**

**5 August 2020
Date**