



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 70(1) of the Private Housing
(Tenancies) (Scotland) Act 2014**

Chamber Ref: FTS/HPC/CV/19/2965

Re: Property at 99 Land Street, Keith, Morayshire, AB55 5AP (“the Property”)

Parties:

**Mr David John Rough, 21B, Calle el Cantal, Mojacar Playa, Almeria, 04638,
Spain (“the Applicant”)**

**Mrs Kim Heighway, 89A Moss Street, Keith, Morayshire, AB55 5HA (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an order for payment against the Respondent in
favour of the Applicant in the sum of Two thousand five hundred and thirty six
pounds and twelve pence (£2536.12) Sterling**

1 By application dated 17th September 2019 the Applicant sought an order for payment of rent arrears and repair costs against the Respondent. In support of the application the Applicant provided the following:-

- i) Inventory of Contents, Fixtures and Fittings;
- ii) Copy Letter from Applicant to Respondent dated 16 September 2019;
- iii) Photographs of property;
- iv) Estimate from Dreams Beds;
- v) Estimate from Huntly Carpet Centre;
- vi) Estimate from Peter Smith, Painter and Decorator;
- vii) Estimate from Stevies Solutions;
- viii) Bank Statements;and

ix) Rent Account.

In response to a request from the Tribunal for further information the Applicant subsequently provided a copy Tenancy Agreement between himself and Andrew Heighway. The Applicant advised that Mr Heighway had passed away and the Respondent had succeeded to the tenancy as his spouse.

- 2 By Notice of Acceptance of Application dated 19 November 2019 the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 6th January 2020.
- 3 A copy of the application paperwork together with notification of the date, time and location of the Case Management Discussion was served on the Respondent by Sheriff Officers on 5th December 2019.

The Case Management Discussion

- 4 The Case Management Discussion took place on 6th January 2020. The Applicant Mr Rough was present and accompanied by Julia Flett, his partner, as a supporter. The Respondent was not present. The Legal Member noted that the application paperwork together with notification of the Case Management Discussion had been served upon her by Sheriff Officers. The Legal Member was therefore content to proceed with the Case Management Discussion in her absence.
- 5 The Legal Member explained the purpose of the Case Management Discussion. The Legal Member then heard submissions from the Applicant on the various parts of his claim as follows:-

Rent Arrears

- 6 The Applicant explained that he sought the sum of £950, being payments of rent for March 2018 and April 2018 that had not been made by the Respondent. The Legal Member queried the rent account that had been submitted with the application which appeared to show arrears in the sum of £694.02. The Applicant explained that the account had been produced by Moray Council and was a statement of benefits paid to the Respondent. Some of those payments had been made to her directly, not to the Applicant. After arrears had accrued the Applicant had applied for the payments of benefit to be made to him as he was entitled to do. These had commenced in August 2018 however the payments for March and April were never made. The Applicant believed the amount of arrears to in fact be in excess of £950 due to a shortfall between the rent and housing benefit paid but that was the amount he was claiming in terms of this application.

Repair, replacement and redecoration costs

- 7 The Applicant also sought repayment of losses he had incurred due to the Respondent's failure to leave the property in the condition it was in at the commencement of the tenancy, fair wear and tear excepted. In particular the Applicant sought the following costs:-
- (i) *Redecoration of living room and stairs in the sum of £930* – the Applicant explained that the Respondent had damaged a wall in the living room. She had undertaken a repair to the wall but had not carried out any redecoration thereafter. The room therefore required to be freshly decorated as the wallpaper could not be restored. The Applicant explained that the property had been redecorated prior to the Respondent and Andrew Heighway taking up occupation in 2015. The whole property had undergone a refresh at that time following the previous tenant's departure. In support of these costs the Applicant had provided an estimate from a painting contractor. The Applicant also made reference to photographs produced.
 - (ii) *Replacement of bedroom items in the sum of £518* – the Applicant explained that the bed, mattress, headboard, pillows, duvet and bedding had all been new at the commencement of the tenancy. They were all missing at the end of the tenancy. The Applicant referred to the inventory that had been produced with the application which showed the items as having been in the property. In support of these costs the Applicant had provided an estimate from Dreams Bedstore.
 - (iii) *Repairs to kitchen units and cupboard in the sum of £725* – the Applicant explained that the kitchen had been new at the start of the tenancy. The old kitchen required a refresh due to wear and tear. At the end of the Respondent's tenancy there had been damage to the units and the cupboards which went beyond fair wear and tear. In support of these costs the Applicant had provided an estimate from a contractor. The Applicant also made reference to photographs produced.
 - (iv) *Replacement of bathroom flooring, toilet and cistern and redecoration in the sum of £871* – the Applicant explained that the Respondent had painted the toilet and cistern. The paint could not be removed therefore the item required to be replaced. The Respondent had alleged water leaks in the bathroom however the Applicant and his contractors could find no evidence of this. The Respondent had requested to lift the flooring which the Applicant had agreed to on the condition that it was reinstated at the end of the tenancy. The Respondent had failed to do this and had painted the floor instead. As a result the flooring in the bathroom required to be replaced. The bathroom had also required

repainting due to condensation damage which went beyond fair wear and tear. In support of these costs the Applicant had provided estimates from a contractor.

Other matters

- 8 In response to questions from the Legal Member the Applicant explained that the Respondent's husband and the original tenant Andrew Heighway had passed away on 23rd November 2016. The Respondent had been living in the property with him since the commencement of the tenancy in February 2015 and was entitled to succeed under the Housing (Scotland) Act 1988. She had therefore become the tenant under the terms of the Tenancy Agreement between the Applicant and Mr Heighway and was bound by its terms.
- 9 The Legal Member then queried the position regarding the deposit of £475. The Applicant confirmed that he had received this following an application to the tenancy deposit scheme. The Respondent had not submitted any written representations and did not challenge the return of the deposit to the Applicant. The Legal Member explained that on the basis that the Applicant had received the deposit this would require to be deducted from any sum awarded by the Tribunal as part of the present proceedings.
- 10 The Applicant made a number of further submissions regarding the Respondent. In particular he highlighted the sympathy he had felt when Mr Heighway passed away and the efforts that had been made to assist the Respondent in maintaining the tenancy thereafter. He outlined a catalogue of instances where the Respondent had failed to cooperate and allow access to the property for repairs to be carried out. This had caused frustration on the part of both the Applicant and his contractors. He explained that the relationship between himself and the Respondent had deteriorated after she had asked him to offset her deposit against the rent arrears and he had advised that he could not do so as the deposit was lodged with a scheme. She had changed her attitude towards the Applicant following that incident. The Applicant explained that he had written to the Respondent on a number of occasions offering repayment plans in order to settle the matter however she had persistently failed to respond. According the Applicant had no other option but to pursue the order for payment.

Findings in Fact and Law

- 11 The Applicant and Mr Andrew Heighway entered into an Assured Tenancy agreement in respect of the property which commenced on 26th January 2015.
- 12 In terms of Clause 2 of the Schedule of Conditions appended to the said Tenancy, the rent payable under the contract by the Tenant was £475 per month.
- 13 In terms of Clause 18 of the Schedule of Conditions, the Tenant undertook to leave the Property in a clean and tidy condition and in good decorative order and to leave all furnishings and contents in the same place they were located at the commencement of the tenancy.
- 14 The Respondent is the spouse of Mr Andrew Heighway. The Respondent succeeded to the tenancy on or around 23rd November 2016 under section 31 of the Housing (Scotland) Act 1988 following the death of Mr Andrew Heighway. The Respondent therefore became the Tenant of the property as at that date under the terms of the said Tenancy Agreement and remained the Tenant up until 18 September 2018 when the tenancy terminated.
- 15 As at the date of termination of the tenancy arrears of rent in the sum of £950 were outstanding. The Respondent is liable to pay the arrears of rent to the Applicant under the terms of the said Tenancy Agreement.
- 16 The Property was not left in good decorative order at the termination of the tenancy. Furnishings and contents provided at the start of the tenancy were missing. Damage had been caused to fixtures and fittings which required repair or replacement.
- 17 At the start of the tenancy the upstairs bedroom contained a bed, headboard, mattress, duvet, bedding and pillows. These items were missing from the property as at the end date of the tenancy. The Respondent is liable for the cost incurred by the Applicant in replacing these items. The missing items in the upstairs bedroom were brand new as at the start of the tenancy. It is reasonable to expect such items to have a natural life of ten years. The Applicant is therefore entitled to 70% of the replacement costs in the sum of £362.60.
- 18 At the start of the tenancy, the living room and stairs were freshly decorated. The Respondent failed to leave the living room and stairs in good decorative order at the end of the tenancy. The damage caused went beyond fair wear and tear. The Respondent caused damage to the wallpaper which was irreparable. The Applicant had no option but to redecorate the room in order to bring the property up to a lettable standard. It is reasonable to expect

decoration too have a natural life of ten years, subject to touch ups where possible. The Applicant is therefore entitled to 70% of the cost of redecoration in the sum of £651.

- 19 The kitchen units and cupboards were damaged at the end of the tenancy. The damage caused went beyond fair wear and tear. The Respondent is therefore liable for the costs incurred by the Applicant in repairing the kitchen units and cupboards. The kitchen was newly installed at the start of the tenancy. It is reasonable to expect a kitchen to have a natural life of fifteen years. The Applicant is therefore entitled to 80% of the repair costs in the sum of £580.
- 20 The bathroom toilet and cistern required replacement at the end of the tenancy. The Respondent had painted both without the consent of the Applicant. The paint could not be removed. The shower screen was also broken. The damage caused went beyond fair wear and tear. The Respondent is therefore liable for the costs incurred by the Applicant in replacing the items. It is reasonable to expect a toilet and cistern and shower screen to have a natural life of fifteen years. The Applicant is therefore entitled to 80% of the repair costs in the sum of £384.
- 21 The bathroom floor required replaced at the end of the tenancy. The Respondent had removed the flooring and had failed to reinstate it. The Respondent is therefore liable for the Applicant's costs in replacing the flooring. The flooring was new at the commencement of the tenancy. It is reasonable to expect flooring to have a natural life of seven years. The Applicant is therefore entitled to 58% of the cost of replacement flooring in the sum of £83.52.
- 22 The Respondent is therefore liable to pay the sum of £2061.12 to the Applicant, being losses incurred by him due to the Respondent's breach of Clause 18 of the Schedule of Conditions appended to the said Tenancy Agreement.
- 23 The Applicant has received the deposit in the sum of £475 following an application to the tenancy deposit scheme which was not challenged by the Respondent.
- 24 Following deduction of the deposit, the sum of £2536.12 is due to be paid by the Respondent to the Applicant in terms of the Tenancy Agreement between the parties.
- 25 Despite repeated requests the Respondent has refused or delayed to make payment of the sums due.

Reasons for Decision

- 26 The Tribunal was satisfied on the basis of the information before it that it was able to make a determination of the application at the Case Management Discussion and that to do so would not be prejudicial to the interests of the parties. The Respondent had been served with the application paperwork by Sheriff Officers. She had been given the opportunity to make written representations and to attend the Case Management Discussion. She had failed to do either.
- 27 The Tribunal heard extensive verbal submissions from the Applicant at the Case Management Discussion. In the absence of any contradictory evidence from the Respondent, the Tribunal accepted the position put forward by the Applicant and found him to be entirely credible.
- 28 The Tribunal was satisfied that the Respondent had succeeded to her late husband's tenancy and was therefore bound by the terms of the Tenancy Agreement between Mr Andrew Heighway and the Applicant. Whilst the Tribunal had sympathy for the position the Respondent had found herself in, it could not ignore the contractual obligations the Respondent had taken on as the Tenant of the property. Having found her to be in breach of those obligations the Tribunal had no option but to make an order against her for payment of the any losses incurred by the Applicant that had arisen from that breach.
- 29 Accordingly, have made the above findings in fact and law the Tribunal concluded that the Applicant was entitled to an order for payment in the sum of £2536.12. In reaching this figure the Tribunal took into account the deduction of the deposit which had been returned to the Applicant and would therefore be applied to his losses. The Tribunal also took into account the betterment principle, namely that a landlord cannot be financially or materially better off at the end of a tenancy, and therefore included this in its calculation of the sums due in respect of the repair or replacement of any contents, fixtures and fittings.
- 30 The Tribunal therefore made an order for payment in favour of the Applicant against the Respondent in the sum of £2536.12.

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.

Ruth O'Hare

06/01/2020

Legal Member/Chair

Date