Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) 2014

Chamber Ref: FTS/HPC/CV/19/0444

Re: Property at Flat 1/1, 51 Winton Drive, Glasgow, G12 0QB ("the Property")

Parties:

Mr Gregor Danks, Flat 1/2, 51 Winton Drive, Glasgow, G12 0QB ("the Applicant")

Mr Frank Hunter, Mr Geoffrey Hunter, 53 Winton Drive, Glasgow, G12 0QB ("the Respondent")

Tribunal Members:

George Clark (Legal Member) and Elaine Munroe (Ordinary Member)

The Tribunal determined that the Application, in respect of arrears of rent, should be granted but the amount of the Order for Payment in respect of arrears of rent should be £3774.51. The Tribunal refused the application in so far as it related to reimbursement of expenses incurred by the Applicant on the termination of the tenancy.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that

1. Background

By application, received by the Tribunal on 11 February 2019, the applicant sought and Order for Payment by the Respondent of the sum of £9,997.51, comprising unpaid rent of £6,074. 51 and reimbursement of costs incurred in reinstating the property to previous living standards, including repair of damage to the property and fixtures and fittings of £3,923. This latter sum was later amended to £3922.

The application was accompanied by a copy of a Short Assured Tenancy Agreements between the parties commencing 1 October 2015 at a rent of £700 per month, a further Short Assured Tenancy Agreement commencing 1 October 2016 at a rent of £750 per month and a third Short Assured Tenancy Agreement commencing 1 October 2017 at a rent of £750 per month. Each Tenancy Agreement ran for a period of 12 months.

The Application was also accompanied by a hand written Rent Statement covering the period from October 2014 to March 2018 showing arrears at the end of March £6074.51

In addition to the principal sum sought, the Applicant requested that the Order include a provision for interest at 5% per annum.

On 29 April 2019 the Tribunal received written representations from Govan Law Centre on behalf of the Respondent. The Respondent contended that the hand written note did not amount to clear evidence of the arrears being sought, she also contended that there was no damage to the fixtures and fittings in the property at the time of their departure in February 2018. The summary of costs was £3,922 but that included £2,000 of labour costs for painting which was not vouched.

Two Case Management Discussions were held on 2 May 2019 and 10 July 2019. In the course of the Case Management Discussions it was accepted by the Respondent that the labour cost for painting had now been vouched. The position of the Respondent was that a printed rent statement, which had been provided by the Applicant, was accurate in respect of the amounts paid by the Respondent but the Respondent contested the claim that arrears were due and expressed the view that the rent increases imposed with effect from 1 October 2015 and I October 2016 had not been lawfully intimated. The Applicant submitted that notice of at least one month was given, as required by the tenancy agreements.

At the Case Management Discussions the Respondent denied that any of the cost spent by the Applicant was as a result of damage caused by the Respondent and that it was simply fair wear and tear for which the Respondent was not liable. It was also claimed that the locks at the property were changed as a result of which the Respondent was not able to take pictures of the property at the end of the tenancy.

At the second Case Management Discussion it was agreed that a Hearing would be required to enable evidence to be led as to whether the rent was lawfully increased and, therefore, whether there were any arrears. The Hearing would also be required to determine whether or not there was any damage caused by the Respondent and, if so, whether the costs claimed were a reasonable statement of the loss.

Prior to the hearing, the Applicant submitted additional copies of photographs accompanied by a written narrative in which he contended that the photographs demonstrated that the condition of the property was not conversant with normal wear and tear. The complete decoration was required together with renewal of carpets and curtains as a result of smoke and nicotine damage. The wash hand basin in the bathroom had been cracked and the toilet was in a dilapidated state. Both had to be replaced. The Applicant also provided a copy of a Notice given under Section 19 of the Housing (Scotland) Act 1988 of intention to raise Proceedings for Possession. The Notice was dated 1 February 2018 and advised that proceedings would not be raised before 19 February 2018. The Respondent also provided a statement by a Karen Pringle to the effect that she had witnessed the Applicant handing the Notice (Form AT6) to the Respondent and stated that the Respondent had informed the Applicant verbally of the intention to leave the property on 16 February 2018.

The Applicant also provided the Tribunal with copies of receipts from 1-2-Let Ltd indicating that the tenancy agreement between the Parties was in force on 8 March 2007.

2. The Hearing

A Hearing was held at Glasgow Tribunal Centre on the morning of 24 September 2019. The Parties were present and the Respondent was represented by Laura Brennan of Govan Law Centre.

After discussion it was agreed, for the purposes of the Hearing the Tenancy should be deemed to have commenced on 8 March 2007. The Applicant provided the Tribunal with a copy of the Tenancy Agreement which commenced on 1 October 2014 at a rent of £650 per month. The Parties accepted that the subsequent tenancy agreements had included purported rent increases to £700 from 1 October 2015 and to £750 from 1 October 2016. The Applicant stated that the Respondent had agreed to each new tenancy agreement and at no time queried rent increases. Ms Brennan argued that, as proper notice of intended rent increases had not been given, the Tribunal should hold that the original rent still applied.

The Applicant told the Tribunal that the property had been in immaculate condition when the Respondent moved in. He accepted that during the tenancy he had not carried out any redecoration, replaced carpets, replaced curtains or fixtures and fittings. He also stated that the Respondent had removed the smoke detectors in the property. The carpets, curtains and blinds had been so damaged by nicotine that they could not be cleaned and had to be replaced. The property had been fully decorated some 18 months prior to the start of the tenancy. The Respondent's representative stated that the Respondent denied removing the smoke detectors and contended that a Landlord should expect to have to replace carpets curtains and blinds at the end of a lease that had run for some 12 years. She also pointed out that there was no evidence of the condition of the property at the start of the tenancy and asked the Tribunal to find that, that even if there was damage beyond fair wear and tear, the respondent was not given an opportunity to rectify matters.

The Applicant advised the Tribunal that the Respondent had indicated the intention to vacate the property when he had delivered the Form AT6 Notice on 1 February 2018. He had also given the Respondent 3 days grace to allow the Respondent to clear the property by 19 February. On that date he had arrived at the property to change the locks.

Ms Brennan then called as a witness Mrs Frances Ann Hunter who told the Tribunal that she was the Mother of the Repondent, Mr Geoffrey Hunter and Mr Frank Hunter and that she lived in the flat immediately above the property. She confirmed that the Applicant had arrived at the property when the Respondent was in the process of moving out and had changed the locks.

The Applicant then stated that the Respondent had had the period from 1 February 2018 to 19 February 2018 to move out and to record the condition of the property at

that time. The Respondent had not, at any time, after that date, contacted the Applicant to ask for further access.

In her closing remarks, Ms Brennan told the Tribunal that it was the position of her clients that they denied having caused any damage to the property, and even if there had been such damage, they had not been given the opportunity to rectify it, and there was in any event, no evidence of the condition of the property at the start of the tenancy. The view of the Respondent was that the Applicant was seeking to improve and upgrade the property at the expense of his former tenants. It was difficult to see, from the photographs provided by the Applicant, what damage they purported to show and she contended that no damage had actually been proved. She instanced the replacement of the toilet shower and light fittings, repeating that the Applicant had not stated what the damage to these items actually was. She asked the Tribunal to dismiss the Application.

The Applicant asked the Tribunal to grant the Order sought in regard to the outstanding rent and the reimbursement of costs incurred in putting right damage caused, primarily by smoke and nicotine.

3. Reasons for Decision

The Tribunal held that the increases in the rent which the Applicant had sought with effect from 1 0ctober 2015 and 1 October 2016 had not been validly intimated to the Respondent. Section 24 of the Housing (Scotland) 1988, states that in order to increase the rent in an assured tenancy the landlord must give notice in a prescribed form (AT2) and the period of notice for a tenancy of 6 months or more is 6 months. The purpose of this provision is to provide reasonable Notice to the tenant and to make the tenant aware of his or her right to refer the Notice to the Tribunal for a Rent Determination. The Applicant accepted that he had not given 6 month's notice and that he had relied on the provision in the tenancy agreement for one month notice to be given.

Ms Brennan had argued that the rent had never been validly increased from its original figure of £550 in 2007, but the view of the Tribunal was that there was no evidence to indicate whether or not any increases between 2007 and 1 October 2015 had been intimated to the Respondent in the manner required by Section 24 of the 1988 Act. Accordingly the Tribunal determined that, for the purpose of determining any arrears, the rent must be taken to be £650 per month, being the figure in place immediately prior to the purported increase which was to take effect from October 2015. The Tribunal was not able to speculate on the process of intimation of any rent increases prior to 1 October 2015.

The Tribunal then considered the printed rent statement provided by the Applicant which indicated arrears of £6,074.51. The Tribunal adjusted this figure to reflect its Decision that the rent had not been validly increased above £650 per month. This had resulted in an overcharge of £2,300 and the Tribunal determined that there were arrears of rent at the end of the tenancy which amounted to £3774.51.

The Tribunal then addressed the claim for payment in respect of alleged damage to the property during the tenancy. The Tribunal noted that the Respondent had lived in the property for almost 11 years and the Tribunal's view was that, after such a long lease, a reasonable landlord would expect to have to completely redecorate the property, and, in all probability replace the carpets and some other fittings, all as a result of fair wear and tear, for which the tenant could not be held responsible. The Tribunal accepted that the cost of decoration would be higher if it was necessary to remove nicotine, but, there was no prohibition against smoking contained in the tenancy agreement. Accordingly the Tribunal was not prepared to order the Respondent the cover the cost of the redecoration. The photographic evidence provided by the Applicant was not of a quality which enabled the Tribunal to hold that the wash hand basin in the bathroom, the shower, the toilet, the kitchen sink and light fittings had been damaged, so the Respondent could not be held responsible for the cost of replacing them.

The Tribunal noted that the Applicant knew how to contact the Respondent and he should have afforded the Respondent the opportunity to comment on and comment, if appropriate, and defects/damage thought by the Applicant to have been caused by fault on the part of the Respondent.

With regard to the smoke detectors the Tribunal had heard contradictory evidence with no independent evidence to support either version. Accordingly the Tribunal was unable to determine that the smoke detectors and carbon monoxide detectors had been removed by the Respondents. It was not disputed that annual gas inspections had been carried out so the Tribunal concluded that the smoke and carbon monoxide detectors had been in place at the last annual inspection.

The conclusion of the Tribunal was that the application, in so far as it relates to claims for damage, should be dismissed.

4. Decision

The Tribunal determined that the Application, in respect of arrears of rent, should be granted but the amount of the Order for Payment in respect of arrears of rent should be £3774.51. The Tribunal refused the application in so far as it related to reimbursement of expenses incurred by the Applicant on the termination of the tenancy.

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.

G Clark

24 September 2019

Legal Member/Chair **Date**