



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/22/2910

Re: Property at Maryfield Cottage, 4 Queen Street, Newport-on-Tay, Fife, DD6 8EE (“the Property”)

Parties:

Nigel Kerby, Mrs Margaret Kerby, Rose Cottage, 2 Queen Street, Newport-on-Tay, Fife, DD6 8EE; Rose Cottage, 2 Queen Street, Newport-on-Tay, DD6 8EE (“the Applicants”)

Dr Saskia Janet Mason, 5 Hillside Place, Newport-on-Tay, Fife, DD6 8DH (“the Respondent”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision in absence of the respondent.

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondent shall make payment to the applicants the sum of five thousand seven hundred and eighty four pounds and eighty eight pence (£5784.88).**
- 2. This was a case management discussion (‘CMD’) in connection with an application in terms of rule 70 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2016, (‘the rules’) and s16 of the Housing (Scotland) Act 2014, (‘the Act’). Mr David Gibb of Tay Letting attended on behalf of the applicants. The respondent did not attend and was not represented. The tribunal was satisfied that the respondent was aware of the CMD and appropriate notice had been given in terms of rule 24. The tribunal had sight of the sheriff officer’s execution of service dated 30 November 2022. Further, the respondent contacted the tribunal administration by email on 18 December 2022 seeking an extension of time to lodge her written representations. An extension was granted to 13 January 2023. No written**

representations have been made. The tribunal procedure with the CMD in the absence of the respondent terms of rule 29 of the rules.

3. The tribunal had before it the following copy documents:

- (1) Application dated 16 August 2022.
- (2) Land certificate.
- (3) Extract from the Register of Landlords
- (4) Short assured tenancy agreement.
- (5) AT5.
- (6) Letter from Tay Letting to respondent dated 12 May 2022.
- (7) Photographs
- (8) Invoice from the Mill Shop for £802.
- (9) Invoice from Richard Berry for £335.
- (10) Invoice from Fax Joiners for £1080
- (11) Invoice from Grant Dein Plumbing for £136.
- (12) Invoice from Grant Dein Plumbing for £1265.
- (13) Invoice from Douglas Creighton Home Improvement for £520.92
- (14) Invoice from Douglas Creighton Home Improvement for £331.96.
- (15) Email from David Gibb to the tribunal with breakdown of costs dated 23 September 2022.
- (16) Check in report dated 25 July 2016.
- (17) Check out report dated 28 March 2022.

The applicant's position.

4. Mr Gibb submitted that the applicant was seeking an order for the sum of £5920.88 made up as follows:

- Replacement of carpets £1137
- Shower room -joinery work £1080
- Shower room- plumber £1265
- New basin and taps £136
- Study bedroom £520.92
- Worktops £331.96
- Loss of rent £1450

Total £5920.88

5. Mr Gibb submitted that his company Tay Letting took over as letting agent for the property in 2019. He stated that it would be the usual practice to inspect the property however due to government guidelines during covid, this was not possible. As a consequence, when the respondent left the property in March 2017 the property had not been inspected since before 2019. In relation to the rent, the tribunal noted that the contractual rent in the tenancy agreement was £690. Mr Gibb stated that in 2019 when Tay Letting took over, the rent was £725. Mr Gibb submitted that the applicants were aware that the respondent planned to have a dog in the property. She was asked to notify the letting agent so that provision could be made for extra cleaning but that this was not done. Mr Gibb stated that the deposit of £690 was returned to the applicants at the end of the tenancy to cover cleaning and other items as the property was left in a very dirty condition and there was damage to a bed and curtains. It was his submission that the deposit is not therefore available to cover any of the items claimed in this application.
6. Mr Gibb submitted that the various items claimed for arose out of two matters. Firstly the carpets in the hall and bedrooms were damaged due to urine presumed to be due to the respondent's pet. There was also a strong odour emanating from the carpets also thought to relate to urine. Secondly, there was an obvious leak in the shower in the bathroom which had cause water damage to the shower and fittings in the shower room, the flooring in the shower room, the walls in the downstairs bedroom and the hall carpet. In addition, the applicants were claiming in relation to mould and damage to the kitchen worktop and two months' rent.
7. Mr Gibb submitted that the respondent had a contractual obligation in terms of clause 11 of the tenancy agreement to notify the landlord of the need for any repair. In his submission the leak in the upstairs shower room was obvious and long standing and was not reported.

Rent

8. Mr Gibb submitted that the applicants were unable to market the property for several months due to work that needed to be carried out to bring it back to the standard of the check in report. He submitted that a claim limited to two months' rent was reasonable in all of the circumstances. He also submitted the property is currently rented to new tenants at £850 per month but the applicants were only seeking two months at the level of rent that the respondent was paying at the end of the tenancy.

Carpets and floorcoverings

9. Mr Gibb submitted that the applicants were seeking the sum of £1137 to replace the carpet in the hall, bedrooms and shower room. He submitted that

they had been damaged due to a combination of water ingress and dog urine. He made reference to the invoices and photographs lodged and the detailed 95 check our report which illustrated the condition the respondent left the property.

Study/bedroom

10. Mr Gibb made reference to the check out report which showed water damage to the downstairs study which had been used as a bedroom. He submitted that the décor and plaster had been damaged due to water leaking from the shower room above. He submitted the sum of £520.92 (as per the invoice), to remove and replace the damaged plaster, replace the lining paper and paint the room is reasonable in all of the circumstances.

Shower room

11. Mr Gibb submitted that the sum of £1080 (as per the invoice from Fax Joiners) to replace the floor beneath the shower tray, replace the plaster board and seal the tray was reasonable in all of the circumstances. Further, the sum of £1265 was also incurred to Grant Dein Plumbing to replace the shower tray and side unit and door. He was unable to clarify why the sum of £136 was incurred for a basin and tap and he withdrew that part of the claim. Mr Gibb made reference to the checkout report and further photographs which showed the water damage to the shower room and floor.

Worktop

12. Mr Gibb made reference to the check out report which had photographs of the damage to the wooden worktop caused by mould and water staining. He submitted that the claim of £331.96 was reasonable (as per the invoice for that amount) as the worktop was being sanded and re sealed rather than replaced. This was to bring the worktop back to a usable condition. He submitted that if the respondent had looked after the worktop, it would not have been covered in mould and stains and the damage was far beyond fair wear and tear.

13. Findings in fact

- The applicants are the owners of the property.
- The parties entered into a short assured tenancy agreement for let of the property on 27 July 2016 for the initial period of 7 months to 27 February 2017 and month to month thereafter.
- The initial rent was £690 but this increased to £725.
- The tenancy came to an end on 27 March 2022 when the respondent left the property.

- The property was left in a dirty and damaged condition by the respondent.
- There was a leak in the shower room which had caused damage to the floor beneath the shower, the hall carpet and the bedroom below the shower room.
- The respondent failed to notify the applicants that a repair was required to fix the leak.
- The hall and bedroom carpets were also damaged due to the respondents' dog urinating on them.
- The applicants incurred costs of £1137 to replace the carpets and the shower room vinyl.
- The applicant incurred costs in replacing damaged plaster and redecorating the bedroom in the sum of £520.92.
- The applicants incurred costs of £1080 for joinery work to reinstate the shower room floor.
- The applicants incurred plumbing costs of £1265 in plumbing work to replace the shower.
- The applicants lost rental income due to the condition of the property, in the sum of £1450.

Reasons.

- 14.**In terms of rule 17 of the rules the tribunal may do anything at a CMD that it can do at a hearing, including making a decision. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair. This was an undefended application as the respondent did not attend and was not represented.
- 15.**The short assured tenancy agreement has a provision in clause 11 for the tenant to notify the landlord if any repairs are required. From the information available to the tribunal it appears that the leak to the shower was a longstanding one and significant damage occurred the property as a result. There is also a considerable difference between the condition of the property in the check in and check our reports and the difference is well beyond fair wear and tear. The tenancy agreement also has a provision in clause 9(g) for the tenant being liable for the expenses of the landlord if the property not fit to be re-let at the end of the tenancy.
- 16.**The applicant had produced vouching for all of the sums claimed and the tribunal was satisfied on the balance of probability that the damages caused to the property were incurred during the respondents' period of occupation and they were not the result of fair wear and tear. The tribunal was satisfied on the balance of probability that the applicant had made out their case for damages to the property. The applicants' representative withdrew the head of claim relating to the taps and sink and the tribunal granted an order for the balance of £5784.88 as being reasonable in all of the circumstances.

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.

Lesley Ward

25 January 2023

Lesley A ward, Legal Member

Date