



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/22/3964

Re: Property at 2 Meldrum Crescent, Burntisland, KY3 0JJ (“the Property”)

Parties:

Miss Sarah Combe, 5 Linton Court, Kinghorn, KY3 9YH (“the Applicant”)

Mrs Roseanna Lynn MacNeil, 191 Kinghorn Road, Burntisland, KY3 9JP (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Ms L Reid (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £375.

Background

1. This is a Rule 70 application dated 27th October 2022. The Applicant is seeking return of her tenancy deposit in the sum of £450. The parties entered into a tenancy agreement in respect of the Property on 20th December 2010. The tenancy ended on 30th April 2022. The Applicant’s representative lodged a copy of the tenancy agreement, deposit receipt and email communication between the parties.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 6th March 2023. Both parties were in attendance. The Applicant was represented by Ms Iona Watson of Frontline Fife. Ms Watson said the tenancy deposit was paid in December 2010 at the start of the tenancy. In May 2022, the Respondent had offered to return half of the deposit, stating that there had been damage to the Property. The Applicant disputes the Respondent’s claim.
3. The Respondent said the Property was left in ill-repair with holes in walls and doors, stained carpets and marks and graffiti in a cupboard. The Respondent said she had photographs of the Property when the tenancy ended, and

receipts for work carried out and a letter from the buyer, who confirmed the state of the Property when she bought it. The Respondent said the cost of the works required was around a couple of hundred pounds, and invoices were available.

4. The application was continued to an evidential hearing, with the matters to be decided by the Tribunal:
 - (i) Did the Applicant breach the tenancy agreement by failing to fulfil her obligations in terms of the condition of the Property?
 - (ii) Was the Respondent justified in retaining the tenancy deposit?
5. The Respondent was ordered to lodge a note of defence within 4 weeks of the issue of the CMD note.
6. By email dated 10th May 2023, the Applicant's representative lodged written representations and productions.
7. No note of defence or productions were lodged by the Respondent.

The Hearing

8. A hearing took place by telephone conference on 31st May 2023. Both parties were in attendance and the Applicant was represented by Ms Watson.

Preliminary Matters

9. The Tribunal raised the issue of the lack of note of defence and productions from the Respondent. The Respondent said she has not been well. She had emailed the Respondent on 20th February 2023 offering to pay the full deposit as she did not feel up to dealing with the procedure, but she did not receive a response.
10. The Tribunal outlined the options open to the Respondent, which were:
 - (i) Request a postponement based on her health issues – the Tribunal explained that any application for postponement would be considered by the Tribunal. The Respondent said she had medical evidence available to support her position regarding health issues.
 - (ii) Proceed with the hearing today.
 - (iii) Agree that she was no longer defending the application and that payment should be made in full in favour of the Applicant, in which case the Tribunal would make an order for payment.

11. The Respondent said she could not see the point in going through with the hearing as she could not see the application going in her favour, and she was just as well to give the money back. There had previously been a Rule 103 application and the Tribunal had ordered her to pay £900 to the Applicant. The Tribunal explained that this was a different procedure, and no outcome had yet been decided.
12. There was some discussion about sources of advice available to the Respondent. She said she was not good at dealing with matters like this, and had not known how to present the photographs of the Property. The Tribunal pointed out that the Applicant had lodged the photographs of the Property and details of the Respondent's claim to retain half of the deposit, which was made up of the sums of £160 for decorating, £15 for cleaning products and £50 for a plumber. The Respondent said she had not received the Applicant's productions. The Tribunal decided to adjourn to allow the productions to be provided to the Respondent, and to allow the Respondent to consider her options.
13. Upon reconvening, the Respondent said she had read the productions and representations and would proceed with her defence of the application at the hearing.

Evidence for the Applicant

The Applicant

14. The Applicant gave evidence that she had not been asked to fix any of the issues within the Property. She considered that some of the issues, such as flaking paint, a loose door handle and carpet staining, were due to fair wear and tear, following a tenancy of almost twelve years. The Applicant said she had left rawl plugs in the walls, but she had not been told this was an issue. The markings described as graffiti were made by chalk, and could have been removed with a wet sponge. It had been an oversight on her part not to remove them. She would have done so if it had been brought up by the Respondent.
15. The Applicant said the carpets were not new at the start of the tenancy. The bedroom carpets were replaced about two years into the tenancy. The stair carpet was not replaced.
16. The Applicant said she had raised repairing issues with the Respondent during the tenancy. It was ten days before a toilet leak was fixed, and issues with the kitchen floor and guttering were never attended to.
17. The Applicant said she cleaned the Property from top to bottom at the end of the tenancy, and it was clean when she left. The Respondent had claimed to have paid a cleaner, but had not been able to produce a receipt. She had then claimed £15 for cleaning products. The Respondent had also claimed that the new owner of the Property had said it was filthy. The Applicant said she could

not understand how this could be the case if the Respondent had called in cleaners and cleaned it herself.

18. The Applicant said the Respondent had been aware that she had installed an outside tap during the tenancy.
19. The Applicant said the issues raised by the Respondent had left her feeling stressed. She described herself as a fair, honest, good tenant and would like that to be reciprocated by the Respondent.
20. Responding to questions from the Tribunal as to why she felt she should have to be asked to leave the Property in a suitable state at the end of the tenancy, the Applicant said she is partially sighted and would have needed someone to point out the issues to her. The Applicant said she had been pressured to leave the Property early, as the Respondent had sent two messages asking her to leave the keys on the Friday, although the tenancy was not due to end until the Saturday. The Applicant confirmed the tenancy ended on the Saturday.
21. There was no cross-examination or re-examination of the witness.

Witness – Ms Fiona Combe

22. The witness confirmed she is the sister of the Applicant. She and her mother attended at the Property on the last day of the tenancy and cleaned the Property. She took down shelving, tidied the garden and removed pots.
23. The witness said the Property was kept clean and tidy throughout the tenancy. The Applicant has three children. She had asked the Respondent to attend to wear and tear issues several times. The Property was not maintained by the Respondent.
24. Responding to questions from the Tribunal, the witness said the Property was left tidy for the new people. Asked whether she had considered filling the holes left when shelving was removed, the witness said no – it was the last day of the tenancy and it was felt it was not unreasonable to leave what was just screw holes in the walls. It was felt that the graffiti would be washed away by rain. The graffiti was not permanent and they never thought to remove it.
25. The witness said her mother cleaned the kitchen and bathroom. The witness spent most of the day moving furniture in her truck and dumping items. She was there pretty much to the end of the day and took her mother home. The standard of cleaning was good and what the witness would have expected.
26. There was no cross-examination or re-examination of the witness.

Evidence of the Respondent

27. The Respondent said she was quite shocked at the overall state of the Property at the end of the tenancy. The Property had been her mother's home. It was in good condition and repair at the start of the tenancy. On inspection, she found holes in the walls and a hole in a door. The hall carpet had been new just before her mother moved out of the Property. The Respondent said she has three children, but her carpets have never been in that kind of state. There was a broken latch on a bedroom window. The oven was black. She tried to clean it with an oven cleaning kit but it could not be cleaned. Her mother had hardly used the oven. The kitchen cupboards were not clean inside. They may have been wiped, but they were not clean. The Respondent said she tried to clean off the graffiti, but it could not all be removed.
28. The Respondent said that the Applicant had six months' notice that the Property was to be sold, so it was not correct to say she had insufficient time at the end of the tenancy.
29. The Respondent said she was not aware that the Applicant had installed an outside tap until the Applicant asked that a plumber turn it back on.
30. Responding to questions from the Tribunal, the Respondent said she and her daughter attended the Property after the Applicant had moved out. They took photographs. The Respondent said she did not claim to have had a cleaning company in – she had said this might be necessary, but there was no time to do so. The Respondent and her daughter bought supplies and tried to clean the Property. They were there on the Saturday and Sunday. The new owner moved in the following Tuesday or Wednesday, and complained about the state of the Property. The new owner said she had to rip out the carpets. The Respondent offered the Applicant half of the tenancy deposit back. She felt this was a fair solution.
31. The Respondent said she had a plasterer in to repair the holes in the walls on the Monday after the Applicant moved out. She was not sure exactly how much he had been paid, but confirmed that the sums notified to the Applicant, including the sum of £160 for decoration, were the correct sums. She thought her husband might have the receipt for this. Responding to questions from the Tribunal, the Respondent said she was unsure how long the plasterer was at the Property.
32. The Respondent said the Applicant had left the garden overgrown. This was not attended to by the Respondent as there was no time before the new owner moved in.

Cross-examination of the Respondent

33. Under cross-examination, the Respondent said she was unsure if repair of the broken window latch was included in the sum of £160. The Respondent said

the window could not be closed due to the broken latch. Responding to questions from the Tribunal as to whether a landlord would be expected to have responsibility for repairing the window latch, the Respondent said she had not been made aware of it.

Summing up

34. Ms Watson submitted that, based on the evidence heard, the deposit should be returned to the Applicant.
35. The Respondent submitted that it would be unfair for the Applicant to be awarded the whole deposit as the Property was not returned in the state in which it should have been returned.

Findings in Fact

- 36.
- (i) Parties entered into a short-assured tenancy agreement in respect of the Property commencing on 20th December 2010 and ending on 30th April 2022.
 - (ii) A tenancy deposit in the sum of £450 was paid by the Applicant to the Respondent at the start of the tenancy.
 - (iii) In terms of clause 6 of the tenancy agreement between the parties, the Applicant was required to keep the Property in good clean condition and repair throughout the tenancy ... fair wear and tear excepted.
 - (iv) In terms of clause 12 of the tenancy agreement between the parties, the Respondent was entitled to apply the tenancy deposit in or towards satisfaction of any sums due by the Applicant for damage to the Property during the tenancy.
 - (v) The Applicant caused damage to the walls of the Property during the tenancy by fixing shelving to the walls.
 - (vi) The Applicant failed to repair the damage to the walls.
 - (vii) The Applicant failed to clean the whole Property at the end of the tenancy, particularly the kitchen and graffiti applied to a shed.
 - (viii) The Respondent is entitled to restitution for damage caused in breach of the tenancy agreement.
 - (ix) The Applicant is entitled to the return of the remainder of the deposit.

Reasons for decision

37. The Tribunal considered it unfortunate that the Respondent did not lodge photographic and other documentary evidence, or lead witness evidence, to support her defence of the application.
38. In considering the matter of whether the Property required further cleaning, the Tribunal took into account the photographs lodged, but considered that they gave a limited picture of the overall state of the Property. The Tribunal considered the evidence of the witness, Fiona Combe, that the Property was left in an acceptable state. The Tribunal took into account the witness's evidence that she had largely been moving items that day, rather than cleaning, and there was no evidence that she had opened kitchen cupboards or the oven to assess their cleanliness. The Tribunal also took into account the Applicant's evidence that she is partially sighted, and that she required to be informed of issues that needed to be addressed. The Tribunal considered this may have extended to the state of cleanliness of the kitchen cupboards and oven. The Tribunal noted that the Applicant did not dispute that graffiti was not cleaned from certain areas. The Tribunal accepted the evidence of the Respondent that further cleaning was required to the Property, and that she had spent the sum of £15 on cleaning products.
39. The Tribunal considered the photographs showing a considerable number of small holes in the walls of the Property. In terms of the tenancy agreement, the Applicant was required to repair any damage to the Property, and she failed to do so. Although the Tribunal considered it would have been helpful if the Respondent had arranged to do a proper inspection on exit, at which time these matters could have been pointed out to the Applicant, with further time allowed for her to address them, that is not a requirement of the tenancy agreement. The Tribunal took the view that the Applicant ought to have known that this matter required to be addressed. The Tribunal was not persuaded that the Respondent's requests that the Applicant leave early provided any justification for the Applicant failing to carry out her responsibilities in terms of the tenancy agreement. In any event, the Applicant did not have to leave the Property early.
40. The Tribunal took into account the Respondent's evidence that she was unsure how long the plasterer was at the Property and whether he included a sum for the repair of the window latch. In the absence of any further definitive evidence as to the sum paid for fixing the holes, and no photographic evidence of any additional hole in another wall, the Tribunal considered a reasonable sum to apportion to the repair work in respect of the damage caused by shelving would be £60.
41. The Tribunal considered that there was insufficient evidence that the Applicant should be responsible for repairing damage to the window latch. Repairs to windows would, generally, be the responsibility of the landlord.

42. The Tribunal made no findings in respect of the outside tap, as there was no evidence provided by the Respondent as to the work required or the sum charged.
43. The Tribunal made no findings in respect of the carpets and whether they were in a reasonable state at the end of the tenancy, taking into account fair wear and tear. The Respondent's evidence was that she did not clean or replace the carpets, and there was no evidence of any loss to the Respondent in this regard.
44. In all the circumstances, the Tribunal considered the sum of £375 should be returned to the Applicant by the Respondent.

Decision

45. An order for payment is granted in favour of the Applicant in the sum of £375

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.

Helen Forbes

Date 31st May 2023