



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/18/3069

Re: Property at 6b Wide Close, Lanark, ML11 7LX (“the Property”)

Parties:

TCIB LLP Trading as Newkeylets, 119 Main Street, Wishaw, ML2 7AU (“the Applicant”)

Miss Patricia Bridget McCue-Smith, 22 Orchardview Drive, Lanark, ML11 9JY (“the Respondent”)

Tribunal Members:

Joel Conn (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. This is an application by the Applicant for civil proceedings in relation to a private residential tenancy in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears and damages in regard to breach of the tenancy conditions. The tenancy in question was a Private Residential Tenancy of the Property by the Applicant to the Benjamin McCue Smith (“the Tenant”) dated 5 April 2018 and commencing on that date (“the Tenancy”). Within the Tenancy agreement, on the same date, the Respondent guaranteed rent and any other obligations of the Tenant to the Applicant.
2. The application was dated 14 November 2018 and lodged with the Tribunal shortly thereafter. The application referred to “rent and also necessary repairs to the property” all totalling £1,925.67 and sought an order in that amount. Little breakdown was provided in the application or

supporting papers. Prior to the Case Management Discussion, further vouching was provided as I refer to further below.

The Hearing

3. On 17 January 2019, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at Glasgow Tribunals Centre, I was addressed by telephone by Pauline Feeney, office manager of the Applicant.
4. The CMD was not assigned to be by conference call but shortly before the commencement time of 11:30, the Tribunal was contacted by one of the members of the Applicant (Andrew Smith) to apologise for his non-attendance due to his vehicle breaking down. I sought to clarify whether Mr Smith was intending to arrive late, or sought a continuation but, by 11:40, there was no appearance by the Respondent either. I thus instructed my clerk to make contact with the Applicant's office to ascertain whether any member or authorised employee wished to conduct the CMD by telephone. Ms Feeney was so authorised, was available, and was willing to conduct the CMD. I commenced the CMD by telephone at around 11:45 from the Tribunal hearing room.
5. The Applicant's office manager confirmed that the application was still insisted upon in the amount of £1,925.67.
6. As I state above, there was no appearance by the Respondent. The Applicant's office manager confirmed that there had been no contact with her since September 2018 but she had been the main contact throughout the Tenancy. I confirmed with the clerk that no contact had been received from the Respondent by the Tribunal. I was satisfied in the circumstances to proceed in the absence of the Respondent and continue the CMD by telephone.
7. I confirmed with the Applicant's office manager that no interest or expenses were sought. She confirmed this was correct.

Findings in Fact

8. By a Private Residential Tenancy agreement dated 5 April 2018, the Applicant let the Property to Benjamin McCue Smith ("the Tenant") with a start date of 5 April 2018 ("the Tenancy").
9. Under the Tenancy, the Tenant was to make payment of £285 per month in rent in advance to the Applicant on the 5th of each month.
10. Under clause 16 of the Tenancy agreement, the Tenant "agree[d] to take reasonable care of the Let Property and any common parts".

11. In terms of clause 36, the Respondent “guarantee[d] all payments of rent and any other obligations under [the Tenancy] Agreement and any other payments due to the Landlord which the Tenant required to pay under this Agreement”. The Respondent executed the Tenancy agreement, accepting the said guarantee obligations, on 5 April 2018.
12. As of 26 October 2018, there was unpaid rent of £1,625.67 due by the Tenant to the Applicant in terms of the Tenancy in respect of unpaid rent for six months from 5 May to 4 November 2018 of £285 per month, less a credit applied by the Applicant of £84.33 for the nine days from 27 October to 4 November 2018.
13. Neither the Tenant nor Respondent have provided any evidence of payment of any part of the said unpaid rent due to 26 October 2018 of £1,625.67.
14. The Tenant breached clause 16 of the Tenancy by causing damage to the door of the Property on or about 26 October 2018.
15. The sum of £250 plus VAT, totalling £300, was incurred by the Applicant to make good damage to the Property by fitting a new door.
16. The costs of £300 were reasonably incurred by the Applicant and form the Applicant’s reasonable loss and damage arising from the Tenant’s breach of contract.
17. In terms of the Tenancy agreement, the Respondent has guaranteed to the Applicant payment of rent and breach of contract damages due by the Tenant totalling £1,925.67.
18. The lease provides no contractual rate for interest.
19. On 28 December 2018, a Sheriff Officer acting for the Tribunal intimated the application and associated documents upon the Respondent, providing the Respondent with sufficient notice of the CMD of 17 January 2019.

Reasons for Decision

20. The application was in terms of rule 111, being an order for civil proceedings in relation to a private residential tenancy.
21. During the CMD, the Applicant’s office manager described an unsatisfactory set of events that concluded the Tenancy. Rent from 5 May 2018, at £285 per month, had been going unpaid. The Applicant’s office was then contacted in September 2018 with the Tenant stating he had been mugged and lost his keys. The contact on behalf of the Tenant made clear that the Tenant was intending to leave the Property and sought to access the Property to remove his belongings. Shortly after that, the

Applicant was contacted by a neighbour at the Property to say that the door to the Property was open. The Applicant sent workmen who secured the door, but noted that the Tenant had belongings remained in the Property. A few weeks later, the Applicant was again contacted by the neighbour who said that the door to the Property had been kicked in by the Tenant. The Applicant sent workmen once again and found the Tenant's belongings had been removed and the door and frame damaged. A new door was supplied and fitted, all around 26 October 2018. Further to all these events, the Applicant thus regarded that the Tenant had now absconded and regarded the Tenancy as at an end from 26 October 2018, the date of securing the Property for the second time.

22. I considered with the Applicant's office manager the further vouching provided by email prior to the CMD. Rental invoices for May, June, July, August, and September (covering the period 5 May to 4 October 2018) were provided, all at £285 per month. The Applicant's office manager confirmed that a further rental invoice of £285 would have been issued for the period 5 October to 4 November 2018. I had further been provided with a credit note for the period from 27 October to 4 November 2018 which the Applicant calculated as £84.33. I was satisfied with the arithmetic and the evidence provided, all totalling arrears of £1,625.67.
23. Further, the Applicant had provided an invoice from themselves for £250 plus VAT (£300) for supplying and fitting the new front door. The Applicant's office manager confirmed that the Applicant would likely have received invoices from its workmen for the various costs involved in this but she did not have them to hand. I was satisfied in the circumstances of this relatively low amount, to accept the evidence provided on the sum incurred in supplying and fitting a new front door. I was further satisfied to accept the evidence, albeit third hand, that it had been the Tenant who had damaged the door, in order for him to recover his belongings before flitting.
24. I was satisfied, on the basis of the application and supporting papers, and the submissions provided by the Applicant's office manager at the CMD that the necessary level of evidence for such civil proceedings on the sum of £1,925.67 had been provided.
25. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the sum of £1,925.67 against the Respondent under the guarantee provisions in the Tenancy agreement.

Decision

26. In all the circumstances, I was satisfied to make the decision to grant an order against the Respondent for payment of the sum of £1,925.67 to the Applicant.

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.

Joel Conn

Legal Member/Chair

Date

17 January 2019