Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/19/3760

Re: Property at 56 Beech Crescent, Rosyth, KY11 2ZP ("the Property")

Parties:

Hilton of Rosyth NHT 2014 LLP, Kiloran Hall, Middle Balado, Kinross, KY13 0NH ("the Applicants")

Mrs Ashley Nimmo and Mr David Nimmo, 101 Garvock Hill, Dunfermline, KY12 7RN; 101 Garvock Hill, Dunfermline, KY12 7RN ("the Respondents")

Tribunal Members:

George Clark (Legal Member) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be decided without a Hearing and made an Order for Payment by the Respondents to the Applicants of the sum of £3,006.02.

Background

1. By application, received by the Tribunal on 22 November 2019, the Applicants sought an Order for Payment against the Respondents in respect of rent arrears, damage to property and a tracing fee. The sum sought was £4,192.80, being £3,430.80 in respect of rent, £672 for damage caused by the Respondents and a tracing fee of £90.
2. The application was accompanied by a Statement of Rent, showing arrears as at October 2019 of £3,430.80, with no payment received since June 2019, photographs of the Property taken on 14 October 2019, a copy invoice from Kapital Residential Ltd. for £672, dated 1 November 2019, and a copy Invoice from Scott & Co, sheriff officers for £90. The Applicants also provided the Tribunal with a copy of an Inspection Report for the Property dated 6 May 2015 and of a Short Assured Tenancy Agreement between the Parties commencing on 11 May 2015.

3. At a Case Management Discussion on 28 January 2020, the Respondents disputed the amount of rent that was due and referred to the fact that the Applicants were claiming the Respondents had failed to pay the rent due for July 2017. This had not been brought to the attention of the Respondents for 17 months and, so far as they were aware, no rent payments had been missed at that time. The Respondents accepted that there were rent arrears, as they had stopped paying rent when the tenancy was coming to an end, but they had been trying to agree a payment plan with the Applicants.
4. The Applicants maintained that the July 2017 payment had been missed but advised the Tribunal that the tenancy deposit had been paid to them, so the sum sought in respect of rent should be amended to £2,717.96.
5. The claim for damage to the Property was for the items listed in the Invoice from Kapital Residential Ltd., namely "Remove paint from living room radiator, Remove decal above front door, Sand and patch holes in 2x bedrooms, Remove and replace sealant in bathroom, Painting in living room, bedrooms x3 and bathroom, Cut grass and light weeding in back garden, Empty bins x4, Clean carpet in Living Room and Staircase, Medium Clean of property, Cut keys".
6. The Respondents said that they had hired a "Rug Doctor" and cleaned the carpets. Mrs Nimmo and her mother had thoroughly cleaned the Property and it was "pretty sparkling". She had taken photographs to prove it. Mr Nimmo said that the carpets probably needed to be replaced as they had been used by a family of six, had no underlay and were quite thin. Given the time the Respondents had been there, their landlord should expect to have to carry out some redecoration. The Respondents accepted that they should pay for the replacement keys, which formed part of the claim in respect of damage.
7. Mrs Nimmo did not accept that all the items on the Invoice had in fact been carried out by the Applicants' tradesman. She said that a neighbour had emptied the bins and that the grass had not been cut or the garden weeded. She suggested that the cost charged for the work was grossly exaggerated.
8. The Tribunal raised with the Applicants the issue of fair wear and tear. The Applicants expressed their view that paint on a radiator and a decal on a door were not wear and tear and that the Property had been new when the Applicants moved in and should have been left in the same condition at the end of the tenancy.
9. The Respondents confirmed that, after the tenancy ended, the Applicants had asked them for their current address, but they had not given it as they had been corresponding by email in trying to agree a payment plan in respect of unpaid rent and they had had no idea that the Applicants were going to make an application to the Tribunal.
10. In light of the disputed issues, the Tribunal decided to fix a Hearing at which both Parties could lead evidence from witnesses.

Written Representations

11. On 3 March 2020, the Respondents made written representations to the Tribunal. They provided a copy bank statement showing the sum of £730 leaving their account on 1 July 2017, confirmation of the "Rug Doctor" appliance hire in 10 October 2019, 25 photographs taken when they left the Property and a Statement from Mrs Nimmo's mother that on 11 October 2019, she had helped her daughter clean the Property, cleaning toilets, sinks,

showers, floors, windows and ledges, had hoovered all carpets, mopped all floors, cleaned inside and outside cupboards, inside and outside of the fridge, which they had also defrosted and had used special chemicals to clean the oven and hob. She confirmed that the Property had been left in a clean condition.

12. On 6 March 2020, the Applicants made written representations to the Tribunal, which comprised a copy bank statement from 30 June 2017 to 2 July 2017. It showed the sum of £730 having been received on 30 June 2017. This had been credited to the June 2017 rent as no rent had been paid prior to that date for the month of June. The bank statement did not show any payment being credited on 1 July 2017.

The Hearing

13. A Hearing was held at Fife Voluntary Action on the afternoon of 11 March 2020. The Applicants were represented by Mr William Dodd, their Property Manager. The Respondents were both present.

14. The Respondents accepted that there were rent arrears and the only issue on rent was the payment for July 2017. The Respondents could not say for certain what had happened but pointed out that it had not been brought to their attention for 17 months. Had they been made aware of the issue, they could have done something to resolve it. Mr Dodd confirmed that the Applicants' bank account records showed no payments in June apart from 30 June 2017 and that the next payment was received on 7 August 2017. The Respondents added that, after the tenancy ended, the Parties had been in discussion about the keys, but there had been no mention of a bill for alleged damage and they had not been given a reasonable opportunity to put matters right themselves.

15. Mr Dodd accepted that, as the Respondents had been in the Property for nearly five years, there would be wear and tear but there had been a hole in a wall which had been filled, but not to an acceptable standard. The bath sealant had been left in a condition where there was evidence of mould. The repainting in the bedrooms had involved merely touching up and the bathroom painting was the result of fair wear and tear, but the deterioration in the decoration in the living room was beyond fair wear and tear and it had to be completely repainted. He did credit the Respondents with effective cleaning of the fridge/freezer, something which many tenants did not do. As landlords, they had to ensure however, that every property was in the best possible condition for a new tenant.

16. The Respondents stated that they had wiped down every wall as part of their final cleaning. They accepted there were marks, which did not simply wipe off but assumed that, after such a long period of occupancy, the Applicants would accept that some redecoration would be needed. They accepted that the grass had not been cut at the time of their moving out but stressed that they would have come back and cut it had they been told about it. They also accepted that they had inadvertently left a decal attached to a wall at the front door of the Property. They had, however, removed a number of other ones without causing any damage to the fabric of the Property, so regarded it as a very minor matter, as was the mark on the living room radiator, which was had been caused by a settee rubbing against it.

17. The Respondents told the Tribunal that there had been a problem of water leaking at the bath through the ceiling below that had been common in the development. It had resulted in the Applicants having to replace or supplement the sealant on a number of occasions.
18. The Respondents told the Tribunal that a neighbour had emptied the bins, but Mr Dodd commented that when he had checked the Property on 11 October 2019, the bins had been full, and the tradesman's Invoice suggested they needed to be emptied.
19. The Respondents accepted that there had been two carpet stains, one on the staircase carpet and one in a corner of the living room carpet which they had been unable to remove with "Rug Doctor" treatment, but pointed out that the carpets were cream, the living room carpet had no underlay and that their family of six had been living in the Property for nearly five years. They also pointed out that the Applicants had benefitted from installation of laminate flooring in the hall, at the Respondents' expense. Mr Dodd stated his view that the marks on the carpet were not fair wear and tear.
20. Mr Dodd then referred to the "Medium Clean" item in the tradesman's Invoice. Such a clean would involve cleaning all surfaces, windowsills, bathrooms, and the insides of cupboards. Mrs Nimmo told the Tribunal that all of this had been done as part of the cleaning before they moved out and that her mother was a professional cleaner, working for a cleaning company, with access to all suitable chemicals and materials.
21. The Respondents accepted their liability to pay for replacement keys.
22. The Respondents confirmed that they had been asked to provide a forwarding address. Their response had been that communication should be by email and they had exchanged emails after that. There had never been a problem about communication between Mr Dodd and them and no indication that an application was going to be made to the Tribunal. Mr Dodd responded that, whilst it was the Applicants' intention to make an application to the Tribunal to recover sums due, that was not the only reason for asking for an address. He said that he had made it clear to the Respondents that any payment arrangement would only be acceptable if they provided a current address. As they had not done so, no payment plan had been agreed and it had been necessary to instruct sheriff officers to trace them in order to make the present application. The Respondents repeated that they had known nothing about the Invoice of 11 November 2019 until they received papers from the Tribunal.
23. The Parties then left the Hearing and the Tribunal Members considered all the evidence, written and oral, that had been presented to them.

Reasons for Decision

24. The Tribunal noted that the only point at issue between the Parties in relation to rent was the rent for July 2017. According to bank statements, the Applicants had received a payment of £730 on 1 July 2017, but the Respondents' bank statements showed an outgoing payment of the same amount on the following day. The Applicants had insisted that they did not receive any other payment in June or July, the next one being received on 7 August. If there had been two payments, one on 30 June and the other on 1 July, it would have meant that the second payment had not been recorded through the Applicants' bank account and the first one had not been shown as debited in the Respondents' bank account. The Respondents did not indicate

that they had paid twice, on successive days, and the Tribunal concluded that, whilst it was hard to explain how a payment could appear to reach a recipient a day before it was debited to the sender's account, on the balance of probabilities, there had only been one payment, which the Applicants had credited against the June rent, and that no rent had been paid for July 2017. The Tribunal put the apparent date discrepancy down to a peculiarity in the banking system for transfer of funds.

25. Mr Dodd had advised the Tribunal that, inclusive of the missed payment for July 2017, the arrears the Applicants were seeking were £2,716.02, being the figure shown on the Statement of Rent provided to the Tribunal (£3,430.80), under deduction of the deposit of £714.78 which they had received from the tenancy deposit holding company. The Tribunal decided that this sum was due by the Respondents to the Applicants.
26. With regard to the claim for damage, the Tribunal was of the view that the expectations of the Applicants were unrealistic. Landlords cannot expect to have their property returned in the same condition as it was at the start of a tenancy, particularly where that tenancy has been of a family home and has continued over a number of years. There will inevitably be wear and tear and tenants are not responsible for fair wear and tear. After a tenancy of nearly 5 years, a landlord must expect to have to carry out some redecoration, especially in a living room, as it takes the heaviest "traffic" and it is not unreasonable to expect that some carpets may have to be replaced through wear and tear. The Respondents had used a "Rug Doctor" appliance and the Tribunal was satisfied that they had made reasonable efforts to clean the carpets.
27. The Tribunal noted that the Applicants had not been satisfied with the standard of patching that the Respondents had carried out to holes in the bedroom walls. The Respondents accepted that they were liable for making good that damage.
28. The Tribunal was of the view that the mark on the radiator in the living room and the removal of one decal were minor matters.
29. The Tribunal did not uphold the claim in respect of replacing the bath sealant. Evidence had been given in respect of a water leak and the fact that the sealant had had to be replaced by the Applicants on a number of occasions, and as it was clear that the Respondents had cleaned the rest of that room and the second bathroom to a good standard, the view of the Tribunal was, on the balance of probabilities, that the Respondents' argument that the existence of the mould was not attributable to lack of cleaning on their part should be preferred.
30. Mrs Nimmo had told the Tribunal that her mother was a professional cleaner and the Tribunal also had before it the statement from Mrs Nimmo's mother as to the cleaning work that had been carried out. The Tribunal accepted this evidence and decided that the cost of a further "Medium clean" should not be borne by the Respondents.
31. The Tribunal noted that the Respondents agreed that they should bear the cost of the replacement keys.
32. The Tribunal also noted the Respondents' comments that they would have come back to cut the grass if they had been given an opportunity to do so. Nevertheless, it appeared that they had not left the grass and garden in a tidy condition.

33. The Applicants had not provided costings against each item in their tradesman's Invoice, so the Tribunal had to determine how much of the Invoice cost should be met by the Respondents. The Tribunal accepted that it was not an exact science, but concluded after considering all the evidence before it, that a reasonable sum to expect the Respondents to pay was £200.
34. The Tribunal agreed with the Applicants that they should be entitled to reimbursement of the tracing cost of obtaining a current address for the Respondents. The Tribunal could not speculate on whether the Respondents would have provided the information under any circumstances, but accepted the evidence of the Applicants that, in their discussions with the Respondents on the question of a possible payment plan for the rent arrears, they had stated that any arrangement would be conditional upon having a current address for the Respondents. This would have been a prudent precaution against any agreement not being honoured. The fact that the Respondents had not provided the information, which the Applicants required in order to apply to the Tribunal, justified the Applicants' decision to ask sheriff officers to trace the Respondents and the Tribunal was satisfied that this cost was recoverable from the Respondents.
35. Having considered all the evidence before it, the Tribunal decided that the sums due by the Respondents were £2,716.02 in respect of unpaid rent, £200 in respect of the share the tradesman's Invoice that could reasonably be attributed to the Respondents and £90 in respect of the tracing fee. The total payable was, therefore, £3,006.02.

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.

Mr George Clark — **Legal Member/Chair**

11/03/2020 — **Date**