



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 71(1) of the Private Housing (Tenancies)(Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/0100

Re: Property at 4 Dale Street, Galashiels, TD1 3EJ (“the Property”)

Parties:

Miss Eilidh McConnell, represented by Mrs Fiona Mackay, both 9 Tiree Gardens, Old Kilpatrick, Glasgow, G60 5AT (“the Applicant”)

Mr Clark Durnion, Eastfield, Millbank Road, Clovenfords, TD1 3LZ (“the Respondent”)

Tribunal Member:

Maurice O’Carroll (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application for payment be refused.

Background

1. This application came before the Tribunal following a claim by the Applicant for repayment of rental payments made in advance to the Respondent in respect of the Property. A Case Management Discussion (“CMD”) was held by telephone conference call on 12 March 2021 at 2pm.
2. Present on the call were Mrs Fiona Mackay representing the Applicant, along with Mr Brian McConnell, and Mr Clark Durnion, the landlord Respondent.

Findings in fact

3. A rental agreement over the Property was signed by the Applicant and the Respondent on 17 August 2020. The start of the lease was 1 September 2020. The rent was £350 per calendar month. No deposit was requested or paid.

4. The lease provided that the first three months' rent were to be paid in advance. Payment to the Respondent of £1,050 was made on behalf of the Applicant by direct bank transfer at the beginning of September 2020.
5. The Applicant is a student. She had rented a property from the Respondent the year prior from 1 September 2019 at a nearby address, 5 Marchbank Street, Galashiels in order to pursue her studies. She contacted the Respondent and asked to be allowed to rent the Property for the academic year starting around 1 September 2020.
6. A valid lease was entered into between the parties in terms of the Scottish Government Model Tenancy Agreement and entry was taken to the Property by the Applicant on 1 September 2020.
7. Notice of termination was sent to the Respondent by the Applicant on 9 October 2020. The lease formally terminated 28 days later on 6 November 2020.
8. The Applicant was entitled to a refund of the advance rental payment amounting to 24 days. The Respondent refunded £350 being a full month's rent. The Applicant sought the remaining £700 of the rent paid in advance.

The Case Management Discussion

9. Prior to the CMD, both parties sent in submissions. The Respondent sent in a timeline of events and certain copy emails. In particular, he provided the Tribunal with the email from Mrs Mackay dated 9 October 2020 which was accepted as being notice of termination of the lease. That email did not mention the condition of the Property and appeared to provide the Covid-19 pandemic as being the reasons for terminating the rental agreement in that local accommodation was no longer necessary for the Applicant to continue with her course.
10. The Applicant sent in photographs taken from the Property which appeared to reveal various defects including dilapidated furnishings, faulty electrical sockets and unclean carpets. It was also stated in evidence by the Applicant that the Property was unsafe due to the absence of smoke alarms and carbon monoxide detectors. This, however was not an application under the Tribunal's Repairing Standard jurisdiction. It was an application for payment.
11. The Applicant's position to the Tribunal was therefore that the contract of lease between the parties was void from the outset due to the condition of the Property. Since the rental agreement was void it followed that no rent was payable. The consequence of that was that the remaining two months' rent paid in advance should be refunded to the Applicant in addition to the single month already paid back by the Respondent.
12. The Tribunal referred the Applicant to the Repairing Standard section of the lease agreement. The Tribunal also drew the Applicant's attention to the Notes accompanying the Scottish Government model tenancy, in particular Clause 18 thereof.

13. In summary, Clause 18 and in particular 18.1 and 18.10 make it clear that where a landlord is in breach of the Repairing Standard, whether at the start of the lease or during the course of it, he is obliged to carry out the necessary repairs to bring the property up to the Repairing Standard within a reasonable period of time. The jurisdiction of the First-tier Tribunal in this respect was briefly explained.
14. The remedy for the failure of a property to comply with the Repairing Standard is not unilaterally to declare the lease at an end, but to seek repairs within a reasonable period of time.
15. Accordingly, the remedy sought by the Applicant, to serve notice after more than 5 weeks and thereafter seek repayment of all advance rent paid, was not one available to her.
16. The lease was only terminated on 6 November 2020. The advance rent had been paid up until 30 November 2020. She was entitled to a refund of 24 days' rent. She was refunded a full month's rent. No other monies are due by the Respondent to the Applicant.

Decision

17. In light of the above discussion, the Tribunal decided to refuse the application for payment.

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.

Maurice O'Carroll

12 March 2021

Legal Member/Chair

Date