



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/23/0089

Re: Property at 6 Eskdale Court, Bonnyrigg, EH19 2JZ (“the Property”)

Parties:

Benchmark Lettings/lder holdings, 22 Great King Street, Edinburgh, EH3 6QH (“the Applicant”)

Ms Laura Macdonald, 22D South Chesters Gardens, Bonnyrigg, EH19 3GF (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondent in favour of the Applicant in the sum of £291.07.

Background

1. The Applicant submitted an application under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicant sought an order for payment in respect of damage caused to the property by the Respondent.
2. By decision dated 1 February 2023, a Convenor of the Housing and Property Chamber, having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. The Notice of Acceptance was intimated to the Applicant’s representative on 2 February 2023. Letters were issued on 22 February 2023 informing both parties that a case CMD had been assigned for 30 March 2023 at 2pm, which was to take place by conference call. In that letter, the parties were also told that they

required to take part in the discussion and were informed that the Tribunal could make a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair. The Respondent was invited to make written representations by 10 March 2023. No written representations were received by the Tribunal.

The case management discussion

4. The CMD took place by conference call. The Applicant was represented by Miss Brannan. The Respondent did not join the conference call and the discussion proceeded in her absence. The Applicant's representative explained that after the Respondent vacated the property, the property was found to be in a dirty condition with rubbish left behind and the utility bill had not been paid. The property had to be cleared, cleaned and repainted. The Applicant's representative contacted the Respondent by email on 9 September 2022 to advise her of the condition of the property and the cost involved to restore the property to an acceptable condition. Following an email exchange, the Respondent agreed to pay the sums due by instalments. The total sum the Respondent agreed to pay was £391.07. The Respondent made 2 payments of £50 but failed to pay the balance. The balance outstanding was £291.07. The Applicant's representative advised that the Applicant incurred the expense of instructing a trace report to establish the Respondent's whereabouts so that these proceedings could be served upon her. She believed that the trace report cost in the region of £102. The Tribunal member explained that expenses can be awarded against a party where that party has put the other party to unnecessary or unreasonable expense through unreasonable behaviour in the conduct of the case. The Tribunal observed that the tenancy agreement does not appear to make provision for liability on the part of the Respondent for the cost of a trace report. There was no information available about other steps taken to establish the Respondent's address and the Respondent does not have notice that a higher sum may be sought by the Applicant. The Tribunal member was not persuaded to find the Respondent liable in respect of the cost incurred to trace the Respondent.

Findings in Fact

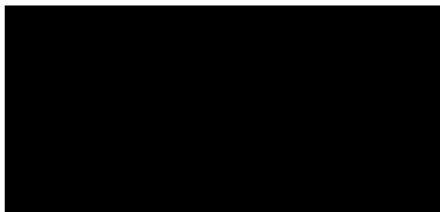
5. The parties entered into a private residential tenancy which commenced 4 May 2020.
6. The Respondent was obliged to take reasonable care of the property and failed to do so.
7. The Applicant incurred expense to restore the property to an acceptable condition.
8. The Respondent is obliged to pay the reasonable costs of repairing the property.

Reason for Decision

9. The Tribunal proceeded on the basis of the documents lodged and the submissions made at the CMD. The Respondent failed to participate in the discussion and did not lodge any written submissions. The email sent by the Applicant's representative to the Respondent of 9 September 2022 set out the detail of the damage and the cost of rectifying it. The Respondent agreed to pay the Applicant by instalments but failed to adhere to that agreement. The sum of £291.07 remains due. The Tribunal was satisfied that the Respondent owes the Applicant £291.07 and accordingly an order for payment was granted in that sum.

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.



Nicola Irvine

Legal Member/Chair

30 March 2023

Date