



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 and Rule 70 of the of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.

Chamber Ref: FTS/HPC/CV/20/2602

Re: Property at 24 Seaview Avenue, Bridge of Don, Aberdeen, AB23 8RJ (“the Property”)

Parties:

Mr John Derek Judd, 72 Elder Place, Fremantle, Western Australia WA6160, Australia (“the Applicant”)

Mr Ian Rettie, Mrs Dorothy Rettie, 3 Cypress Walk, Bridge of Don, Aberdeen, AB23 8LD (“the Respondent”)

Tribunal Members:

Martin McAllister (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pays the Applicant the sum of FOUR THOUSAND AND TWENTY ONE POUNDS 95 PENCE (£4,021.95).

Background

- 1. This is an application seeking a payment order. It is dated 11th December 2020. The Applicant seeks a payment in respect of arrears of rent, contractual payments due under the tenancy agreement and payments in respect of work which he states required to be done after the Respondents vacated the Property. The sum claimed is £6,332.75.**
- 2. A case management discussion was held on 15th February 2021 and a Direction was issued on the same date requiring the Applicant to produce certain information. He was asked to produce an up to date rent statement and vouching for costs incurred by him.**

The Hearing

- 3. The Hearing was held by audio conference because of the coronavirus restrictions. Ms Campbell of Stonehouse Lettings was present and represented the Applicant. Mr Rettie was present. The Applicant was not present. Ms Campbell said that she had advised the Applicant of the arrangements for dialling into the Hearing and had understood that he intended to participate. She said that she was happy to proceed in his absence and had all the necessary information to deal with the matter.**

Preliminary Matters

- 4. It was noted that, in response to the Direction, a rent statement had been produced by the Applicant together with a summary. In respect of the vouching requested from the Applicant, it was noted that, on 2nd March 2021, the Applicant's letting agent had submitted a statement indicating that he could not afford to pay the various contractors to do work and had carried out the work himself. The letting agent also enclosed a letter from the Applicant dated 16th February 2021. The Tribunal had before it the application, the tenancy agreement with amendments, various quotations, two invoices, a Check out Report incorporating photographs, submission by the Applicant's letting agent and letter from the Applicant dated 16th February 2021.**

Findings in Fact

- 5. 5.1 The Applicant and Respondent are parties to a short assured tenancy agreement dated 16th June 2014**
- 5.2 The Tenancy was terminated on 1st August 2020.**
- 5.3 The monthly rent due was £1,200.**
- 5.4 There are rent arrears of £4,467.95.**
- 5.5 There are late payment charges of £840 which are contractually due by the Respondent.**
- 5.6 The Applicant has paid a locksmith's invoice for £114 for which the Respondent is responsible.**

The Tenancy Agreement

- 6. The Respondents occupied the Property in terms of a short assured tenancy agreement dated 16th June 2014 and they vacated it on 1st August 2020.**
- 7. The short assured tenancy agreement stated that the rent payable is £1,400 per month. It also allowed for additional payments to be made in event of non payment of rent:**

"2.2 ii) The Tenant acknowledges that if he fails to make any payment on the date it falls due, then the Landlord may charge the Tenant a late fee of £20 plus VAT on the

date on which the payment fell due and a further late fee of £40 plus VAT on the tenth day after the payment fell due. If the Tenant fails to pay the late fee then the Deposit will be charged as detailed in the Deposit Clause. The Tenant agrees that the late fees in this clause are a fair measure and represent losses likely to be incurred by the Landlord as a result of the Tenant's breach of the obligation under clause 2.2i) above and hereby accepts these late fees a fair and reasonable and irrevocably waives any claim to the contrary."

8. The rent payable was amended by formal documents between the parties on two occasions and the rent payable at termination of the tenancy was £1200.

Matters Agreed

9. Ms Campbell referred to the rent statement which had been lodged with the Tribunal and showed that rent arrears as at 1st August 2020 were £4,467.95. Mr Rettie said that he thought that the rent was high given the market conditions in Aberdeen but conceded that the level of arrears was accurate.
10. The rent statement showed application of twelve "Tenant Admin Fees" of £48 and eleven "Tenant Admin Fees" of £24. Ms Campbell said that these fees are due in terms of the tenancy agreement and that the Applicant had wanted them to be applied. Mr Rettie said that he disputed that these were payable and he said that he had spoken to a lawyer who had told them that they were unenforceable. He said that he had no evidence to lead in this regard. The relevant clause of the tenancy agreement was discussed (clause 2.2 ii)) and Mr Rettie conceded that he had signed the agreement and that he was liable for the charges applied. The total of the charges, including VAT, is £840.
11. Ms Campbell and Mr Rettie agreed that the total sum due from rent and charges is £5,307.95. Mr Rettie said that the deposit of £1400 required to be deducted from that and Ms Campbell said that the deposit had been applied to the end of tenancy charges.

Matters in Dispute

12. In addition to rent arrears and late payment fees, the Applicant's claim is in respect of a number of matters relating to damage, cleaning, repair and renewal.
13. Ms Campbell referred the Tribunal to one of two invoices which had been lodged. One was from Cruickshank and Gordon dated 3rd September 2020 and is in respect of replacement of a lock to the side door of the Property. It is for £114. Ms Campbell said that there had been no key left by the Respondent for that door and that a locksmith had to be instructed to replace the lock. Mr Rettie said that, as far as he knew, a key had been left.
14. Ms Campbell referred the Tribunal to the other invoice which had been lodged. It was from Drain Surgeon Plumbing and Heating Engineers Ltd dated 21st

September 2020 and was for the sum of £210. The narrative on the invoice stated "Works carried out at above address on 18.09.2020." Ms Campbell was questioned about the lack of narrative and said that the invoice referred to an order number which would have been raised by her company. She said that the work was in relation to reinstallation of a towel rail in the bathroom which was part of the central heating system. Mr Rettie said that the towel rail had come off and he thought it was probably around 2017. He said that he had spoken to the agents about it and that they knew about it. In Mr Judd's letter of 16th February 2021, he stated that the towel rail was damaged in 2017 and that he had agreed for it to be "refitted/replaced" which he had paid for. He said that, if the Respondent had informed the letting agent, he would have agreed to repairs being carried out. The letter states that the Applicant wants the cost of reattaching the towel rail to be reimbursed and that "towel rails do not just fall off the wall." Ms Campbell said that tenanted properties are periodically inspected and that one had been done on 13th January 2020. She accessed the report and indicated that it stated that the radiator towel rail was not attached.

15. Ms Campbell said that Applicant was seeking payment in respect of other costs for which quotations had been obtained and where the Applicant had carried out work himself. She also said that part of the claim was in relation to damage dilapidations which totalled £240. When questioned about some of the items detailed in the claim for dilapidations namely pin holes in walls, Ms Campbell conceded that the claim should be reduced by £50 because the quotation for decoration covered some of the dilapidations and not to reduce this aspect of the claim could amount to an element of "double charging."
16. Ms Campbell said that she had never been to the Property.
17. Ms Campbell referred to the Check Out Report dated 17th August 2020 which she had lodged and which detailed defects and also contained photographs. She said that this report was prepared by a department of Stonehouse Lettings which is not concerned with day to day management of properties. She was referred to page 4 of the Report which stated "...property has been left in fair order taking into account the length of tenancy and condition at the beginning of tenancy." Ms Campbell said that such a statement did not preclude work requiring to be done by a landlord as a result of a tenant's failure to meet the contractual obligations incumbent on her/him at the end of the tenancy.
18. A quotation from First Class Cleaning Aberdeen dated 2nd September 2020 was referred to. It is for the sum of £660 and is in respect of deep clean of the Property, external window cleaning and an item of £110 exclusive of VAT for removal of items. Mr Rettie said that the Property was perfectly clean. Ms Campbell referred the Tribunal to photographs in the Check out Report showing items at the side of the hut and within the garage that required to be removed. Mr Rettie said that these items belonged to the landlord and were in the Property at the start of the tenancy. He said that there were also items in the loft which belonged to the landlord. Ms Campbell said that she had no

receipts with regard to cleaning materials etc and could only state that the cleaning works were carried out by the Applicant.

19. Ms Campbell said that the quotation for gardening work was £580 and the Tribunal was referred to an email from Kathleen Soutar to Stonehouse Lettings on 15th September 2020 which stated “Garden would be £580 as Ally would require a skip.” Mr Judd’s letter of 16th February 2021 referred to the Respondents having a trampoline in the garden for a number of years which caused the grass to die and to damage caused by matting being laid for access to the whirligig. Mr Rettie said that he had cut the grass regularly and that matting was put down to protect the grass. He agreed that there had been a trampoline but not that it had been there for a number of years. He said that grass would grow back.
20. Quotations from Keith Smith, painter and decorator and dated 23rd August 2021 were referred to. They total £499.20. Mr Rettie accepted that the Property had been freshly painted when he took entry and he said that there was fair wear and tear on the décor at termination of the tenancy. Ms Campbell said that she had no receipts available for decorating materials. Mr Judd’s letter of 16th February 2021 refers to all rooms having to be repainted.
21. The Tribunal had before it an email from George Gordon (presumably of Cruickshank and Gordon) dated 3 September 2020 for supplying and fitting a new lock to the front door at the price of £98 plus VAT (£117.60). Ms Campbell could provide no receipts for a new lock. Mr Judd’s letter of 16th February 2021 states that the Respondents should pay for the cost of a lock because they did not return the keys which they had been given. The Tribunal noted the terms of page 47 of the Check Out Report which stated that 3 Yale and one mortice key had been returned.
22. The list of dilapidations listed a number of items to which sums had been allocated. Two examples are “Bath- chips to interior base, £15 Tenant charge for damage” and “Mirror- 1 mirror door – cracked top corner, £20 Tenant charge for damage.” Mr Rettie’s position with regard to the items on the list of dilapidations was consistent. He said that any defects were either there when he moved in (such as the mirror door) or were as a result of fair wear and tear.
23. Ms Campbell said that the Property had not gone on the rental market with her agency and that she did not know what had happened to it. Mr Rettie said that the Property had been sold.
24. Mr Judd’s letter refers to works being carried out by him and his wife because he could not have sold the house in the state that it was in.

Submissions

25. Ms Campbell asked the Tribunal to make a payment order for the sum claimed after taking into account the concession made in relation to the dilapidations. She said that the sum of £1,400 had been recovered from the tenancy deposit scheme and had been credited to the end of tenancy charges and not to the rent arrears.
26. Mr Rettie asked the Tribunal to completely disregard the quotations. He said that the position of the Applicant was that the Property was “some kind of tip” and he said that nothing was further from the truth. He said that there was no way he could know if any of the work claimed to be needed was actually done and he disputed that it was required in the first place.

Discussion and Reasons

27. The Tribunal has to determine, on the balance of probabilities, if it is appropriate to make an order for payment in the sum sought. The total sum claimed is £6,332.75. This is in respect of rent arrears of £4,467.95, contractual late fees of £840 and a sum in respect of repairs, cleaning, renewals and dilapidations of £2,424.80. From this total of £7,732.75 must be deducted £1,400 in respect of the deposit leaving a balance of £6,332.75.
28. Parties have agreed that the rent arrears of £4,467.95 are due and also the contractual fees of £840. This means that the sum in dispute for determination is £1,024.80.
29. Mr Judd chose not to give evidence and Ms Campbell has never been to the Property and could provide no first hand evidence of what work may have been done to the Property. The note of the case management discussion and the Direction both dated 15th February 2021 gave notice that the Tribunal would be seeking vouching for sums claimed.
30. The Tribunal had two invoices before it. One is for £114 in respect of a side door lock which had been changed. There was no clear evidence on why the lock was changed but the Tribunal was prepared to accept this as a proper expense to be claimed. Mr Rettie could provide no clear evidence on the matter other than, as far as he knew, the key(s) had been in the Property.
31. The other invoice was in relation to reinstatement of a towel rail. Mr Rettie said that the letting agent had been advised that this work required to be done. In Mr Judd’s letter he said that the correct course of action would have been for the tenant to advise the letting agent. Ms Campbell was able to state that, in March 2020, it had been aware of the issue because the inspection report noted it. The Tribunal saw no reason to doubt Mr Rettie’s evidence that he had advised the letting agent of the issue. The Tribunal determined that, since the towel rail is part of the central heating system as confirmed by Ms Campbell, it is the responsibility of the landlord to deal with it. No evidence had been led

that the fault with the towel rail had been caused by the Respondent. The Tribunal therefore rejected this part of the Applicant's claim.

32. In considering the other aspects of the claim, the Tribunal found that the Applicant had not made his case. No evidence was led with regard to any work carried out. It is not enough for a landlord to obtain quotations and use those as a means of extracting funds from a tenant. The Tribunal did not accept the Check Out Report as being definitive evidence that work required to be done to the Property. The Report described the condition of the Property as fair given the length of the tenancy and the condition of it at its outset. Mr Judd chose not to provide more evidence in support of his claim. For example, no receipts were produced for the lock, paint or cleaning materials.

33. In summary, the Tribunal determined that the sums of £4,467.95 and £840 are due in respect of rent arrears and the contractual fees together with £114 for reimbursement of the cost of replacing the side door lock. From this must be deducted the sum of £1,400 which was recovered from the tenancy deposit scheme. The Tribunal determined to make a payment order of £4,021.95.

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.

Martin J. McAllister
Legal Member
17th May 2021