

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 1988 and Rule 70 of the First –tier Tribunal for Scotland Housing and Property chamber (Procedure) Regulations 2017

Chamber Ref: FTS/HPC/CV/19/1434

Re: Property at 25 Kestrel Crescent, Greenock, PA16 7BH (“the Property”)

Parties:

Mr David Campbell, 167 Eldon Street, Greenock, PA16 7PA (“the Applicant”)

Miss Carol O'Malley, Mr Shaun Curran, 114 Rankin Street, Greenock, PA16 7JW; UNKNOWN, UNKNOWN (“the Respondent”)

Tribunal Members:

Yvonne McKenna (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision (in absence of the Second Named Respondent)

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

The Respondents are to pay the sum of £873.80 (EIGHT HUNDRED AND SEVENTY THREE POUNDS AND EIGHTY PENCE) to the Applicant.

BACKGROUND

1. This is an application by the Applicant for payment in respect of sums to represent the damage caused to the Property during the course of the tenancy breaching the terms of the tenancy agreement. The sum sought is £ 1399.72. Service on the First Respondent has been effected personally. Service on the Second Respondent has been made by advertisement.
2. The application included the tenancy agreement between the parties , copy photographs showing the extent of the neglect and copy invoices for which payment is being sought.
3. A previous request for a postponement of the Hearing had been made by Mr. Curran on the basis that he was on holiday. He had supplied generic information about a flight but had not produced proof that he was abroad on

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holiday. The postponement was opposed by the Applicant. Ms. O'Malley did not oppose the postponement. The postponement was refused by the Tribunal.

4. A Case Management Discussion had taken place on the 2nd August 2019 at which the Applicant's Representative and Ms. O'Malley attended.

The Hearing

5. The Applicant was not present. He was represented by Ms. Swan of Blair and Bryden, Letting agents. The Respondent Ms. O'Malley was present together with a Supporter Ms. Paige Hardy. The Second Named Respondent Mr. Curran did not attend.
6. Ms Swan had lodged late the previous afternoon some further productions and on the morning of the Hearing the Respondent lodged photographs which she claimed showed some defects in the Property at the time she moved into the tenancy. The Applicant lodged on the morning of the Hearing a cash statement being a copy of the Client Ledger for the Property from the Letting Agency. Neither party objected to the late lodging of the productions which were allowed to be accepted by the Tribunal late. Neither party sought an adjournment of the Hearing for any reason. Time was afforded to both parties to read over all the new documentary evidence.
7. Both parties accepted that a tenancy had been entered into between the Applicant and Ms. O'Malley and Mr. Curran. The tenancy agreement had commenced on 27th September 2017. It was a matter of agreement that the tenancy had ended on 31st March 2019 and that Ms. O'Malley had left the Property some months prior to the end of the tenancy.

Evidence on behalf of the Applicant.

8. Ms. Swan sought damages in relation to the condition of the Property at the end of the tenancy. Her claim was under the following specific heads of damage;
 - Clearing of the Property £180
 - Supplying and Fitting of new oven £210
 - New turf £175.92
 - Labour for turf £350
 - Changing of locks and fixing windows £160.80
 - New carpets and underlay £598
 - Painting works £130
 - Filling of holes and new door £120The total sum due was £1924.72. After deduction of the deposit the amount claimed as being outstanding amounted to £1399.72 which was the payment order sought.
9. Ms. Swan had produced a ledger which provided evidence that all these sums had been paid by the Letting Agents with the exception of the turfing and the carpets. These had been paid for by the Applicant himself. In relation to the turfing the Applicant had not produced verification to her of payment. He was currently on holiday she said. He had provided proof of the carpet payments by way of a receipted invoice for part of the payment and a copy cheque book

- to show the other part had been paid. Ms. Swan also gave evidence that she personally had seen the carpets being fitted by the carpet fitters who had supplied the invoices.
10. Ms. Swan in her evidence said that she dealt with 90 properties and this was the most badly neglected property that she had seen. It was left in the worst state. The replaced carpets were due to the carpets being sodden with urine and ripped at places and with tape on them at others. The Applicant has claimed for the lounge and hall carpets only.
 11. Ms. Swan said that the oven door was cracked at the front. She had lodged a photograph showing the damage. It was beyond economic repair.
 12. The keys which were returned by Mr. Curran were returned late and did not afford entry to the Property. Ms Swan said that the locksmith told her that the damage to the lock had been intentional. Accordingly in order to gain access the locks required to be replaced. In addition windows required to be repaired.
 13. The garden area was muddy .It was not in the same state as when the Property was leased to the Respondents. Photographs showing the condition of the garden at the commencement and end of the tenancy were produced.
 14. Ms Swan had lodged photographs of the damage to the walls and to a door in the Property and an invoice was provided to substantiate the filling of holes and the fitting of a new door .In addition an invoice was provided for the painting of the hall and the lounge.
 15. The Respondent Mr. Curran had left a number of items in the Property including a couch various items in the loft and bags of rubbish. An invoice was provided showing the sums due for the clearing of the Property.
 16. Ms. Swan said that the Applicant had not charged for other matters such as the cleaning of the Property and damage caused to worktops in the kitchen.
 17. Ms Swan said in evidence that she appreciated that it was hard for Ms. O'Malley as she left the Property before Mr. Curran.
 18. In relation to the window repairs Ms. Swan said that the windows had all been repaired and checked by her workmen as and when faults were reported.

Evidence by the Respondent Ms. O'Malley

19. Ms. O'Malley said that she left the Property in October 2018. She became quite emotional and said that Mr. Curran had left her for another woman. She accordingly cannot account for the state of the Property at the conclusion of the tenancy.
20. She said that the carpet in the Livingroom was ripped when she was there and she accepted that. She said that the stair carpet had been new at the beginning of the tenancy. She said that it wasn't replaced properly as it was frayed at the corner step. She could not however speak to the condition of the carpet at the end of the tenancy.
21. Ms. O'Malley did accept that there were two dogs in the Property when she lived there.
22. She said that Mr. Curran had told her that he would let the Letting Agent know when she left the Property. She had not been aware that he had not done so until February 2019.
23. Ms. O'Malley also said that there were windows that were faulty at the outset. These had been repaired during the time she lived there. She said that the

front upstairs window in the bedroom was letting in water. She also accepted that she had never reported this to the Applicant.

FINDINGS IN FACT

- There was a valid tenancy agreement entered into between the parties in respect of the Property.
- The tenancy commenced on 27th September 2017 and the tenancy ended on 31st March 2019.
- Ms O`Malley vacated the property in October 2018.
- Ms. O`Malley did not intimate to the Applicant that she had left the Property.
- Clause 30 of the tenancy agreement states that the Tenant will be liable for the cost of repairs where the need for them is attributable to his fault or negligence and that of any person residing with him, or any guest of his.
- The Property was left in a state of neglect at the termination date.
- The sums sued for have been vouched with the exception of the turfing works

REASONS FOR DECISION

The Tribunal was satisfied that the Applicant was entitled to the sums sought in the Application with the exception of the turfing works which were not properly vouched. The claim for the turfing works amounted to £525.92 which requires to be deducted from the sums claimed for. There was no evidence submitted to the Tribunal that these works had been paid for by the Applicant. The Tribunal was satisfied that the tenancy agreement continued in its contractual terms until terminated on 31st March 2019, with both Respondents continuing to be jointly and severally liable for the Property up to the termination date. No written termination or indeed verbal termination of the tenancy was made by Ms. O`Malley. Both Respondents are therefore responsible for the state of the Property at the tenancy termination date.

DECISION

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment of the undernoted sum to the Applicant

Sum of EIGHT HUNDRED AND SEVENTY THREE POUNDS STERLING AND EIGHTY PENCE (£873.80)

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

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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.

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Legal Member/Chair

19/09/19

Date