



**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**

Chamber Ref: FTS/HPC/CV/18/1933

Re: Property at 83 Overhaugh Street, Galashiels, TD1 1DL (“the Property”)

Parties:

Europe Investments Ltd, 30 East Main Street, Darvel, KA17 0HP (“the Applicant”)

Mr Kevin Pattie, Ms Stephanie Picton, 16 Croft Street, Galashiels, TD1 3BJ; 16 Croft Street, Galashiels, TD1 3BJ (“the Respondent”)

Tribunal Members:

Graham Harding (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 dismissed.

Background

1. The Applicant applied to the Tribunal by application dated 27 July 2018.
2. A Case Management Discussion was held on 2 November 2018.
3. A Hearing was held on 7 December 2018. Reference is made to the Notes on a hearing of the Tribunal of the same date.
4. Following that hearing the Tribunal issued a Direction dated 8 December 2018 requiring the Applicant to clarify whether the entries in the rent statement for the period 9 March 2018 to 8 April 2018 shown as “£50.00 08/05(T) £50.00 18/06(T) were to represent the payments made by the Respondents in May and June 2018 relative to the agreement to pay off rent arrears at the rate of £50.00 per month. The Direction also required the Applicant to confirm that

the sum sought of £798.74 took account of the two payments of £50.00 paid by the Respondents in May and June 2018.

5. By letter dated 17 December 2018 the Applicant provided information to comply with the Direction.
6. A further hearing was assigned to take place on 7 June 2019. This was adjourned at the request of the Respondents and a fresh hearing assigned for 23 July 2019.
7. By letter dated 7 July 2019 the Applicant made further written submissions and the Applicant's representative Mr Kenneth Johnstone advised the Tribunal that he was unable to attend the hearing due to prior commitments but wished the hearing to proceed on the basis of the Applicant's letter.

The Hearing

8. The Hearing took place at Langlee Community Centre, Galashiels on 23 July 2019. It was attended by the Respondent Miss Stephanie Picton. The Applicant was not present or represented. In view of the correspondence from the Applicant the Tribunal proceeded in the absence of the Applicant.
9. Miss Picton advised the Tribunal that the Respondents had paid a further £50.00 to the Applicant on 5 July 2019. She said that leaving aside the disputed claim for the redecoration costs that left a balance due to the Applicant of £118.74. She said that the Respondents were in a position to pay the remaining balance by telephone banking immediately if the Tribunal accepted that the Respondents were not due to meet the Applicant's claim for redecoration.
10. The Tribunal referred Miss Picton to the Notes of the Hearing of 7 December 2018. Miss Picton confirmed that this accurately reflected the Respondents' position with regards to the arrangements in respect of the redecorating. Miss Picton said the reason the applicant added the decorating cost was because the Respondents had not maintained the payments towards the rent arrears but there had never been an agreement that this would be done. Miss Picton said she had genuinely thought that she had only been liable for 30 days rent and not two months' rent. Had she known the legal position she would not have stopped making the payments.
11. With regards to the quality of the painting done by Mr Pattie she had seen the property after the work had been done and other than one wall which had some bubbles and which had been shown to Mr Johnstone she thought the work looked alright. Mr Johnstone at that time never gave any indication that the Applicant intended to make any charge for redecoration.
12. Miss Picton accepted the figures for the rent and electricity as calculated by the Applicant but disputed that the Respondents should be liable for the redecoration costs.

13. There was a short adjournment during which the Tribunal considered the evidence of Miss Picton and the written submissions following which the Tribunal invited Miss Picton to make an online transfer of £118.74 to the Applicant's bank account. Miss Picton did this and sent a screenshot of the successful transfer to the Tribunal.

Findings in Fact

14. The parties were in a Short Assured Tenancy Agreement that ended on 22 April 2018.

15. At the end of the lease after reimbursement of their deposit to the Applicant the Respondents owed rent of £513.74, cleaning costs of £40.00 and £15.00 for electricity.

16. The Respondents paid £100.00 to the Applicant prior to the raising of these proceedings.

17. Since the raising of the proceedings the Respondents have paid a further £468.74.

18. There was an agreement between the parties at the end of the tenancy that the Respondents would partially redecorate the property which they did.

19. The Applicant did not give any indication to the Respondents at the time the property was returned that they intended to charge for redecoration costs.

20. The Applicant applied the redecoration cost as a penalty on the Respondents for failing to adhere to an agreed repayment plan in respect of rent due at the end of the tenancy.

21. There was no contractual provision entitling the Applicant to impose such a penalty.

Reasons for Decision

22. The Tribunal was disappointed to note that the Applicant's representative was unable to attend the hearing but as no request had been made for a postponement and as the Applicant had been content for the Tribunal to proceed with the hearing on the strength of the Applicant's letter of 3 July and the written submissions the Tribunal considered it was able to determine the application in the absence of the Applicant's representative.

23. As the Respondents had cleared the debt in respect of the rent, cleaning and electricity the only issue for the Tribunal to determine was whether the Applicant's claim for the redecoration cost was justified. It was accepted by the Tribunal that there was never any agreement between the parties that the

Respondents would be charged for the cost of redecoration. It seemed to the Tribunal that there was an agreement that the Respondents would carry out some redecoration at their expense and that would be an end to the matter. It appeared that the Applicant decided to impose the redecoration charge as a penalty on the Respondents because they had not maintained their agreement to make payment of the rent and other costs. However the Applicant did not advise the Respondents of his intention in this regard at the time of entering into the agreement and it did not seem to the Tribunal from the evidence presented to it that there was any contractual provision for doing so. In the circumstances therefore the Tribunal was satisfied that this part of the Applicant's claim should not be upheld.

24. As the Respondents had paid the remainder of the sums said to be due the Tribunal concluded that no further sums were due to the Applicant.

Decision

25. The Tribunal having carefully considered the evidence at the hearing and the written submissions of the parties dismisses the application.

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 Graham Harding

Legal Member/Chair

23 July 2019

Date