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(1) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/19/2016

Re: Property at 20 Moss Road, Carstairs Junction, Lanark, ML11 8PH ("the Property")

Parties:

Mr Ivan Stott, Mrs Angela Stott, Greenmount, Biggarshiels Road, Biggar, ML12 6RE ("the Applicant")

Mr Stuart Watson, Mrs Dorothy Watson, 10 King Street, Carstairs Junction, Lanark, ML11 8RJ ("the Respondents")

Tribunal Members:

Eleanor Mannion (Chairperson)
Gordon Laurie (Ordinary Member)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an Order is granted against the Respondents for payment of the undernoted sum to the Applicant:

Sum of TWO THOUSAND, SIX HUNDRED AND THIRTEEN POUNDS AND NINETY ONE PENCE (£2,613.91)

Findings in Fact

1. The Applicant entered into a tenancy arrangement with the Respondents, originally starting in November 2015. A Short Assured Tenancy Agreement ("SATA") dated the 13 August 2017 was entered into by both parties.
2. The letting of the Property was managed by Limehouse (Property Specialist) Limited ("Limehouse") at 4 High St, Bigger, ML12 6BN.

3. The monthly rent as set out in the SATA was £475 payable every calendar month, with payment due on the 13th of every month.
4. The Respondents' rental payment was made up of housing benefit, which was paid into their bank account every 4 weeks, and their own income.
5. In May 2019 and June 2019, rent was not paid by the Respondents.
6. A Notice to Quit was served by the Applicant and applications were made to the Tribunal for eviction and rent arrears. Before the eviction application was heard, the Respondents left the Property.
7. The Respondents notified Limehouse by email dated the 6 July 2019 advising that they left the Property on the 1 July 2019, the keys having been posted through the letterbox.
8. This notice was received on Monday 7 July 2019.
9. As Limehouse were not aware when the Respondents intended to leave the Property, it was not possible to undertake an inspection prior to the termination of the tenancy by the Respondents.
10. At the time the Respondents left the Property, relations with Limehouse had become strained to the point that there was little to no communication between them.
11. On 9 July 2019 the Applicant, accompanied by his wife and a member of staff from Limehouse attended the Property and undertook an inventory and inspection report. Extensive photographs were taken and a detailed written report prepared by Limehouse.
12. The Property had been cleaned to a degree before it was vacated but required further cleaning.
13. The paintwork to the walls and woodwork was scuffed, marked and chipped. This was the case across the house.
14. There was some fraying to the carpets and they smelled of animals. The lino in the bathroom was stained.
15. The Respondents had some assistance moving from the Property, as volunteers from a local charity helped them pack up their possessions. The removal of their possessions was undertaken by the Council.
16. Items were left in the house and in the garden. These items included plant pots, a lawnmower, garden gnomes, laundry baskets, broken items. Items were also left in the kitchen, in various cupboards in the house and in the attic.

17. The shed in the back garden had a padlock on it and was not accessible during the period of the tenancy.
18. The Respondents had left miscellaneous items at the front of the house and requested a bulk uplift from the Council.
19. The lawn in the front and rear garden was mowed on the 15 June 2019. Weeds were growing on gravel areas at that date. No further gardening was undertaken by the Respondents prior to their move out date. As it was the height of summer, the grass and weeds continued to grow.
20. Dog faeces and general rubbish were found in the grass in the rear garden on 9 July 2019.
21. The gas tank was left empty by the Respondents.
22. The Applicant had the Property deep cleaned. He undertook redecoration work, painting all walls, ceilings and woodwork in the Property, removing and replacing all carpets and the lino to the bathroom. He engaged a contractor to remove the items left in the house and garden, mow the lawn, and deal with the weeds and dog faeces.
23. The Applicant spent the following:
    a. Cleaning - £150
    b. Redecoration - £1,755
    c. Carpets and bathroom lino- £1,468.96
    d. Garden and rubbish removal - £440
    e. Special uplift from Council - £30.90
    f. LPG Gas refill - £433.28

24. The Applicant applied to Safe Deposits Scotland to retain the deposit of £450 to offset against the above items. This was agreed and repaid to Limehouse. This was broken down as follows:
    a. Cleaning - £150
    b. Gardening - £50
    c. Decoration - £250

Assessment of evidence

25. A hearing took place on the 29 January 2020 and both parties were in attendance.

26. Extensive documentation was provided by both parties underpinning their arguments as well as written submissions in advance of the hearing. Evidence was heard from the Applicant, Ms Laura Mallon, on behalf of Limehouse, the Respondents and Mrs Julie Fulton who assisted the Respondents in their move from the Property. Almost every item was disputed. At a case management discussion which took place on 29 November 2019, the Tribunal, with the agreement of the parties, organised the heads of claim into 6 areas which are:
    a. Rent arrears totalling £881.03
    b. Redecoration costing £1,755
    c. Garden works and waste removal costing £470.90
    d. Flooring costing £1,468.96
    e. LGP gas costing £4,33.28
    f. Cleaning costing £15

Rent arrears

27. The Applicant provided rental statements which indicated that rent was not paid when it fell due on the 13 May or 13 June 2019. Ms Mallom gave evidence that there were no previous issues with receiving rent from the Respondents but these payments were not made. She advised that the figure of £881.03 covered period 13 May to 13 June and from the 13 June to 7 July when they received notice from the Respondents that they had left the Property. She advised that this figure was provided by the computer system they use.
28. The Respondents stated that while they did not dispute the figures provided, they did not accept that rent was due and owing. They gave evidence that they paid their rent every 4 weeks, when they received their housing benefit, and as such made 13 payments per year. They were of the view that they in fact were owed money as they had overpaid their rent. They formed this position after taking advice from Money Matters, a money advice service associated with the housing department of South Lanarkshire Council. They informed the Tribunal that while they did not have an exact date, they sat down with Money Matters in June who advised them that they had overpaid their rent and so they should not pay any further rent.
29. The Respondents advised that they informed Ms Mallon by email of this fact. This email was not produced in evidence, nor was evidence provided of the

overpayment calculations. This absence of evidence was unusual given the breadth of documentary evidence provided by both parties on the other points.

30. The Tribunal noted that as per the rent statement, a rental payment was not made in May or June 2019 and so found that the figure of £881.03 in respect of rent was due and owing to the Applicant.

Redecoration

31. The Applicant gave evidence that it was necessary to repaint the entire Property once it was vacated. He stated that while there had been no previous issues with the Property at the time of periodic inspections during the course of the tenancy, there was a substantial deterioration in the condition of the house by the time the tenancy ended. He noted that every single wall was scuffed, marked or dirty and every aspect of the building needed to be addressed. He conceded that there was no substantial damage and no holes in the walls but the overall package was a Property which required redecorating throughout. He stated that while he would expect to do some redecoration at the end of a 5 year tenancy, he would not expect to do everything.
32. The Respondents stated that they accepted the house would need some painting, but that a whitewash throughout would be sufficient and had they had more time, they would have undertaken this. They also stated that while there were light marks on the walls, the issue with the decoration of the Property was due to damp and mould in the Property which they raised with Limehouse.
33. They felt the amount sought was too high, noting that they had painted the property twice during the tenancy. This was described as "a full paint" but as they gave further evidence, they advised that it was not possible to paint the woodwork as it was fragile and peeling, that they did not paint one of the bedrooms due to mould and instead they painted as they went. They accepted that there were light marks on the walls but no deep gouges.
34. Mrs Fulton who was in the Property in the days leading up to the Respondent's vacation thereof was asked about the state of the Property and indicated that it was in need of painting and that if she were moving in, she would ask the landlord to paint.
35. The Tribunal found in favour of the Applicant's evidence, noting the concessions made by the Respondent and the evidence of Mrs Fulton who

indicated that the Property needed to be painted. The Tribunal found that the state of decoration was more than mere wear and tear which would not normally be attributable to a tenant.

Garden and waste removal

36. The Applicant indicated that there was an accumulation of items left in the property from the attic down to the cupboard under the kitchen sink and that there were abandoned and broken items in the rear garden. The grass had not been cut, there were weeds on the gravel/paved areas and the rear lawn had rubbish and dog faeces strewn in it. It was not a job that he could undertake and so he engaged a contractor to assist. The detailed invoice provided broke down the various tasks in this category and the price for each totalling £440. A special uplift was also organised with the Council costing £30.90.
37. The Respondents countered stating that if there were items left in the property, they should have been returned to them or at the very least, they should have been contacted in respect of same. They conceded that they did not oversee the removal of their possessions as the move was handled by Council workers. They stated that as they were packing, they threw out rubbish, leaving items collected at the front of the property for collection by the Council by way of a bulk uplift. They questioned the validity of the Applicant's payment receipt in respect of the Council special uplift and stated that they had contacted the Council who advised them that there was only one bulk uplift organised in respect of the property and this was the bulk uplift they themselves organised.
38. They stated that the lawn was cut in June 2019, there was some weeds in the gravel area but the garden was clean and tidy. Photographs of the garden dating from 15 June 2019 were provided. Weeds were also noted on the paved area.
39. Mrs Fulton stated that there was grass and weeds in the front and rear garden but "nothing that you couldn't do yourself". She gave evidence that she was in the Property on the last day and once it was emptied she went around checking the cupboards. She confirmed she only checked the downstairs rooms. She indicated that she didn't remember seeing items underneath the sink although a photograph was provided by the Applicant of a full cupboard under the sink.

40. One area of dispute was the shed in the garden. The Applicant stated that it was necessary to empty this and this task was itemised as £50 on the invoice noted above. The Respondents indicated that they had no access to this shed, that it was padlocked and there was no key. The inventory report from the beginning of the tenancy noted the shed had a padlock with no key.
41. Another item in dispute was a fridge freezer which the Respondents stated was left outside at the front of the property for a bulk uplift along with other items. The Applicant when inspecting the property photographed the fridge freezer inside the property. The Respondent indicated that they believed the Applicant and/or someone from Limehouse has returned this to the Property. Mrs Fulton stated that she remembered that this was taken outside by the Respondent (Mr Watson) and another person. When asked, she confirmed that she did not see them move the fridge freezer outside but simply that "it was outside, that's all I know".
42. Having considered the competing evidence the Tribunal found that there were items left in the property and in the garden which required to be removed. The photographs taken on the 9 July 2019 evidence cupboards in the property which had not been emptied as well as the attic. The Respondents conceded that they did not in fact remove their possessions as this was done by the Council. The Tribunal noted that it is for a tenant to ensure that they take all of their possessions with them and in the event that this has not happened, the landlord can assume that the items remaining are unwanted.
43. In respect of the shed, the Tribunal noted the photograph of same with a padlock thereon and accepted the Respondents' evidence that they had no access to this and so any items contained therein were not their property. The Tribunal noted the photographic evidence of the fridge freezer inside the property and did not accept the Respondents' argument that the Applicant or Limehouse had returned this to the property. The fridge however was not the only item in dispute and was not wholly material to the findings in this head of claim. They did not accept the argument that the receipt provided for the special uplift was fake.
44. The Tribunal found that the garden required to be cleared of rubbish and animal faeces, the lawn mowed and weeds removed. While the Respondents had undertaken some gardening in June, their photos of their completed work

evidenced weeds on the paved areas and they conceded there were also weeds on the gravel area. At that time of year, both the lawn and the weeds would have continued to grow, meaning at as at the 9 July 2019, gardening work was required to addresses both issues. Mrs Fulton conceded that the garden required a tidy up, although suggested it was something that the Applicant could have done himself. The Respondents, who had two dogs and a cat did not deny that there was animal faeces in the back garden. It was directly referenced in the invoice provided by the contractor engaged by the Applicant and the Tribunal sees no reason why this should not be accepted.

Carpet and lino replacement

45. The Applicant stated that the carpets were replaced before the tenancy started and provided an invoice from January 2014 for the supply and fit of carpet to 2 bedrooms, living room hallway and stair and vinyl to the kitchen and bathroom. The vinyl/lino in the kitchen was replaced in 2017 at the request of the Respondents. At the end of the tenancy, he advised that it was necessary to replace the carpets due to the animal smell as well as the lino in the bathroom. The cost of this was £1,468.96. He accepted that the carpets had been in place for 5 years at the end of the tenancy, noting the guidance on the lifespan of carpets provided by Safe Deposits Scotland but indicated that he expected the carpets to last longer than 5 years but they hadn't achieved this. He noted that they were not excessively damaged, that there was some damage and fraying and a wrinkle in the living room but the primary issue was the smell.
46. The Respondents countered that the carpets "were done" and had served their purpose, which is why it was necessary to replace them. They argued that this was due to fair wear and tear and the quality of the carpets. They attempted to argue that the carpets were in situ longer than January 2014. They confirmed they had two dogs and a cat and lived in the property with their son. They rented a machine to clean the carpets in June 2018, a year before they vacated the property because there were aware of a smell, given their pets. They indicated that they would be happy to pay for the carpets to be cleaned again but disagreed that they were responsible for the cost of the carpet replacement. In respect of the lino, they stated that the lino in the kitchen, which had been

replaced in 2017 did not need to be replaced and the bathroom lino was subject to normal wear and tear only.

47. Mrs Fulton was asked about the carpets and a general animal smell in the property. She gave evidence that the carpets were a bit worn and there was an animal smell to them. She stated that she did not class it as "a really doggy smell" and that she is conscious of this as she also has dogs in her house.

48. The Tribunal considered the evidence and accepted that the primary reason for the carpet replacement was the strong animal smell rather than the general condition of the carpet. Both the Respondents and their witnesses confirmed that there was an animal smell in the house, albeit they stated that it was not particularly strong. The Respondents' hired a carpet cleaner in June 2018 to deal with the smell, after receiving the invalid Notice to Quit. The smell was not disputed.

49. The Tribunal has taken into account the rule of thumb advice that the average lifespan of carpets is five years. This is not an absolute rule, but instead general guidance. As such, there will be cases where landlords can seek to recover some or all costs of carpet or flooring replacement, even where that carpet or flooring has been in place for five years or more. It is clear to the Tribunal that where tenants have pets, this may contribute to the condition of the carpets or accelerate the end point of the life cycle of carpets. In this case, the Respondents had three pets, two dogs and a cat. While a landlord is not automatically entitled to seek the cost of carpet replacement from a tenant, particularly where the carpet has been in place for five or so years, so too a tenant cannot seek to divest themselves of all responsibility for the condition of the carpet, simply by the passage of time. In the Tribunal's view, the Respondent must share some of the liability of the cost of replacing the carpet and bathroom lino covering.

Cleaning

50. While both parties gave evidence on the cost of cleaning and the reasonableness or not of this, it was accepted by the Applicant that the invoice of £150 for cleaning fees has been covered in its entirety by the deposit refund from Safe Deposits Scotland. As such no further sums are due and owing to the Applicant under this heading.

LPG Gas

51. The Applicant advised that at the outset of the tenancy, the LPG Gas tank on the Property was full. While there is no photographic evidence of this, Ms Mallon gave evidence that she recalled the tank being full. The SATA operates a full to full policy, that the tenants should leave the LPG gas tank full at the end of the tenancy where it was full at the start.
52. The Respondents disputed that the LPG gas tank was full at the start of the tenancy. They gave evidence that they first filled the tank in February 2016 and at that time, only partially filled it due to the cost involved. They gave evidence that they did not have central heating during the winter months but instead used electric heating. They provided an invoice from the gas company setting out the payments made for gas delivery from February 2016 to the end of the tenancy.
53. The Tribunal noted that there was no evidence of a full tank at the commencement of the tenancy. While the evidence of the Respondents that they did not require central heating during the first winter months of their tenancy seemed unusual at first, it was noted that during the course of the tenancy the Respondents only ordered gas on three occasions; February 2016, November 2016 and November 2017. This suggests low gas usage and a reliance on another form of heating, namely electric, as suggested by the Respondent. As such, the Tribunal accepted the Respondents' evidence that they found the gas tank empty and so had no requirement to refill it.
54. The Tribunal found that no further sums were due to the Applicant under this head of claim.

Decision

55. The parties entered into a SATA, originally in November 2014. An updated tenancy agreement was entered into in August 2017 with an increased rent of £475. The commencement date of this tenancy agreement is 13 August 2017.
56. This SATA sets out that rent of £475 is payable every calendar month.
57. Paragraph 1 sets out the undertakings the Respondents agreed to. These include at Paragraph 1(b)(i) "to keep the Premises and the contents therein in a clean and tidy condition and properly aired and in particular to have all

windows, loose covers, curtains, blankets and carpets regularly cleaned and to pay to your client a fair and reasonable sum in compensation for any damage to the structure or decoration of the Premises caused by me or any person or persons or animals being or entering upon the Premises with my express or implied consent".

58. Paragraph 1(k) states "to maintain the garden ground (if any) pertaining to the Premises in a neat and tidy (sic) and free from weeds".
59. The SATA sets out the contractual position which permits the Applicant to raise this action for rent arrears and damages.
60. The Tribunal finds that the Respondents failed to pay rent from the 13 May 2019 to the 7 July 2019.
61. The Respondents are liable to pay £881.03 in respect of outstanding rent to the Applicant.
62. The Tribunal finds that the Respondents are responsible for some of the redecoration costs incurred by the Applicant at the termination of the tenancy. This has been assessed at 50% of the total redecoration costs, amounting to £877.50. This assessment has been reached taking into account the normal wear and tear which a tenant would not normally be responsible for and weighing this up against the accepted evidence of the overall condition of the house and the concession by the Respondents that house required to be painted, a concession which was backed up by the evidence of the independent witness, Mrs Fulton. The Tribunal notes that £250 was paid from the deposit to the Applicant in respect of redecoration. As such a further £627.50 is payable by the Respondents.
63. The Tribunal finds that the Respondents are responsible for some of the cost of the gardening work and rubbish removal. Two invoices were provided, one totalling £440 from San Juan Services and another totalling £30.90 from South Lanarkshire Council. Noting that £50 had already been retained from the Respondents' deposit and that the removal of items from the shed, costed at £50, cannot be charged, the Tribunal finds that the remaining £370.90 is payable by the Respondent.
64. The Tribunal finds that the Respondents are responsible for some of the cost incurred in replacing the carpets throughout the house and the line in the bathroom. This has been assessed at 50% of the total cost for carpets and

flooring, amounting to £734.48. This assessment has been reached taking into account the evidence accepted by the Tribunal in respect of the reason for replacing the carpet being the animal smell and balancing this up against the age of the carpet and the Respondents' responsibility for the condition of the carpet at the end of the tenancy.

65. The Tribunal finds that no sums are due to the Applicant in respect of cleaning costs.

66. The Tribunal finds that no sums are due to the Applicant in respect of refilling the LPG gas tank.

67. The total amount due and owing to the Applicant in respect of rent arrears and damage to the Property as permitted under the SATA is £2,613.91

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.

Eleanor Mannion

Chair

18.02.2020

Date