



**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/18/3252

Re: Property at 25C Glasgow Road, Blantyre, G72 0LA (“the Property”)

Parties:

Mr Matthew Redward, 33 Liberty Lane, Surrey, KT15 1NQ (“the Applicant”)

**Miss Nicole McDougall, 97 Burnbrae Road, Blantyre, G72 0RZ (“the
Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a payment order dated 15th November 2018 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in his application payment of arrears in rental payments of £1,878.63 in relation to the Property from the Respondent, together with damages of £710.00 and trace costs of £75.00. He provided with his application copies of the short assured tenancy agreement, form AT5, rent arrears statement, and various photographs said to show damage to the Property.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 1st March 2019, and I was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 21st March 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Ms McGuire, letting agent. The Respondent did not appear, nor was she represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

Ms McGuire explained that the Respondent had quit the Property on 21st September 2018, and that the sums sought related to outstanding unpaid rent together with the cost of repair to damage caused to the Property during the Respondent's tenancy of it.

The Tribunal noted that the rent arrears statement provided with the application indicated that the outstanding rental was £2,237.64. Ms McGuire confirmed that at around the time she submitted the application she was not aware of the precise date when the Respondent had left the property.

Having subsequently confirmed that date to be 21st September 2019, she had recalculated what was due to that date, which was the sum of £1,878.63. That was the sum sought in the application, but she had submitted her earlier calculation in error with it. She provided the Tribunal with the corrected rent arrears statement which showed the balance outstanding as £1,878.63.

Ms McGuire indicated that the trace cost related to tracing the current address of the Respondent. In response to the Tribunal's enquiry, she accepted on looking over the terms of the short assured tenancy agreement that it did not provide for recovery of such an expense from the tenant, and indicated that she would no longer seek that amount.

In relation to damages, Ms McGuire explained that when the Property was inspected after the Respondent had vacated it, various damage was found. In particular, two internal doors had several holes apparently punched in them, which holes had been roughly filled with Polyfilla in a failed attempt to repair them. Both required to be replaced, as did a section of skirting board beading apparently chewed and damaged by a dog.

A cupboard door handle in a bedroom had been removed which required to be replaced, and a side bath panel had been pulled off which required to be re-sealed. The mastic seal around the bath also required replaced, albeit in response to an enquiry from the Tribunal, Ms McGuire accepted that this latter aspect could be deemed as fair wear and tear, and she estimated the cost of that element alone to be about £20.00 plus Vat. Ms McGuire indicated that she would be content for that amount also to be removed from the sum sought in the application.

Damp patches on the walls in two rooms caused by condensation had required to be treated. She explained that tenants are advised at the start of the tenancy not to push large items of furniture into direct contact with walls for prolonged periods to avoid the build up of condensation, and to leave a small gap to allow air circulation to avoid such damp problems.

The total cost of rectification of this damage amounted in total to £480.00 including Vat, and Ms McGuire had provided a copy of a receipt for this amount to the Tribunal.

The Applicant also had to pay £120.00 including Vat to a cleaning and removal company to gather and dispose of miscellaneous personal belongings of the Respondent which she had left behind when she quit the tenancy, including a settee and rolled up carpet. Ms McGuire had provided a copy of a receipt for this amount to the Tribunal.

Finally, the Applicant had to pay £110.00 including Vat to a cleaning company to clean the property to an acceptable standard, the Respondent having left it in a dirty condition. Ms McGuire had provided a copy of a receipt for this amount to the Tribunal.

Ms McGuire in explaining all these items referred to the various photographs provided with the application, which clearly showed the items listed above, and invited the Tribunal to grant an order for the total sum of £2,564.63, after deduction of the trace costs and cost of the replacement of the mastic seal around the bath.

Statement of Reasons

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement and the copy rent arrears statement provided, and was satisfied that this disclosed an outstanding balance of rent arrears in the sum sought of £1,878.63.

The Tribunal considered that the terms of the short assured tenancy agreement did not provide for the recovery of the cost of a trace fee, which cost Ms McGuire confirmed the Applicant was not now seeking.

The Tribunal was satisfied from the material provided that with the exception of the replacement of the mastic seal around the bath which seemed to be fair wear and tear, that the other costs did not fall into the category of fair wear and tear.

Clause 10 of the short assured tenancy agreement obliges the Respondent to leave the interior decoration in good order, fair wear and tear excepted, and clause 11 obliges the Respondent to leave the furnishings, effects, fittings and fixtures in good order, fair wear and tear excepted.

Clause 29 provides that the Respondent will be liable for the cost of repairs where the need for them is attributable to her fault or negligence and that of any person residing with her or any guest of hers.

The Tribunal was satisfied that the costs of repair evidenced by the receipts provided (except in relation to the replacement mastic seal around the bath) fall within the scope of clause 29, and that she is liable for those costs which total £456.00 inclusive of Vat.

In terms of clause 34 of the short assured tenancy agreement, the tenant is responsible for meeting all reasonable removal costs in respect of items of personal property left in the Property by her after she quits the tenancy. The Tribunal considered the removal costs evidenced by the receipt provided to be reasonable and recoverable in terms of clause 34, which costs total £110.00 inclusive of Vat.

Finally, clause 15 of the short assured tenancy agreement obliges the Respondent to leave the Property in a good and clean condition when she quits the tenancy, and obliges her to pay for the cost of any cleaning required in the event that she does not do so. Again, the Tribunal considered the cleaning costs as evidenced by the receipt provided to be recoverable in terms of clause 15, which costs total £120.00 inclusive of Vat.

In these circumstances, Tribunal shall make an order for payment of the sums above noted.

Decision

For the above reasons, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £2,564.63.

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 Neil Kinnear

Legal Member/Chair

21/03/19

Date