

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) arising from a tenancy under Section 1 of the Private Housing (Tenancies) Scotland Act 2016**

**Chamber Ref: FTS/HPC/CV/23/3474**

**Re: Property at 36B Skeltiemuir Avenue, Bonnyrigg, Midlothian, EH19 3PX (“the Property”)**

**Parties:**

**Miss Chloe Duffy, Mr Kerr Hall, 60 Dobbie's Road, Bonnyrigg, Midlothian, EH19 2AZ (“the Applicants”)**

**Mrs Jennifer Drummond, Mr Paul Drummond, 8 Harmony Court, Bonnyrigg, EH19 3NY; 8 Harmony Court, Bonnyrigg, EH19 3NY (“the Respondents”)**

**Tribunal Members:**

**Susan Christie (Legal Member) and Elizabeth Dickson (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondents for payment of Five Hundred Pounds to the Applicants.**

**Background**

1. The Applicants applied to the tribunal for a payment Order for recovery of £500 paid by Chloe Duffy. The application was accepted by the tribunal on 4 October 2023.
2. The Respondents were invited to give written representations by 22 November 2023. They were submitted on that date.
3. There is included within the case paperwork the various written submissions and paperwork provided to the tribunal over the period to the hearing. This included two walkaround videos that everyone was able to view and ask questions on.

## **The Case Management Discussion (CMD)**

1. Both Applicants participated in the CMD on 13 December 2023 at 10am by conference call. Mr John McAuley, solicitor, represented the Respondents.
2. The tribunal proceeded with the CMD and explained the purpose of it to the Parties.
3. The Applicants sought permission to provide video evidence and after discussion it was agreed that this may be submitted.
4. Further information was required to allow all Parties and the tribunal to be fully appraised of the timeline of events with Safe Deposits Scotland (SDS) and their procedures where there are substitute tenants with regards to any claims on the deposit. A Direction was later issued to the Parties to cover the matters discussed and agreed at the CMD as required.
5. As there is an associated tenancy deposit application dealing with the same tenancy and similar issues, the Hearing was scheduled to take place for both on the same day. Parties were made aware that each application would be determined separately, and they should be prepared to address the tribunal on their position in relation to each. For this application, Parties were asked to carefully consider the points they consider relevant.

## **The Hearing**

1. Both Applicants and both Respondents participated in the conference call on 14 February 2024 at 10am. The date had been agreed with the Parties at the CMD.
2. An application to postpone the hearing made on behalf of the Respondents in the days leading up to the Hearing had been refused by the tribunal. The tribunal considered that progress could fairly be made and wished to discuss the details of the lateness of a response by the Respondents to the tribunal's Direction and to ascertain fuller details of any issues as preliminary matters before any evidence was led.
3. The Parties all presented their case and gave their evidence of their understanding of matters.
4. The tribunal received the late response to the Direction into the papers for overall consideration.

## **Findings in Fact**

1. The Property was initially rented by the Respondents to SN and another person, referred to in this decision as JB. Their tenancy commenced on 1 January 2022 as detailed in a Safe Deposits Scotland document provided by the Respondents.
2. The Property has two bedrooms.
3. A Deposit was paid by SN and JB to the Respondents each for £500 totalling £1000. This was placed with Safe Deposits Scotland (SDS). The date it was placed in the scheme is 17 February 2022.
4. The original tenant SN moved out of the Property without giving advance notice to the Respondents.

5. The Applicant Chloe Duffy and her partner Kerr Hall moved into the Property on 1 April 2022 effectively as a replacement for SN.
6. The Applicants occupied one of the bedrooms (and utilised the communal areas along with JB) as their principal home and therefore under a private residential tenancy from that date.
7. The Private Housing (Tenancies) (Scotland) Act 2016 ('the 2016 Act') applies to private residential tenancy matters.
8. The Applicant Chloe Duffy was the lead tenant at 1 April 2022.
9. No written private residential tenancy agreement was given to Chloe Duffy by the Respondents at the outset of the tenancy on 1 April 2022.
10. No private residential tenancy agreement was ever signed by the Parties.
11. No document setting out the terms of the tenancy was given to Chloe Duffy at the outset of the tenancy on 1 April 2022. Under section 10 of the 2016 Act the Respondents were under a duty to provide that by the end of 1 April 2022.
12. In the absence of written terms of the tenancy, statutory terms apply to the tenancy with reference to The Private Residential Tenancies (Statutory Terms) (Scotland) Regulations 2017. Those do not have specific provisions for or relating to tenancy deposits.
13. The Applicant's portion of the rent was initially paid over by the Applicants through the tenant JB until she moved out.
14. Notwithstanding the absence of any tenancy agreement or written document setting out the terms of the tenancy at the outset, around 1 October 2022 the Respondents asked Chloe Duffy for £500 as a deposit.
15. The sum of £500 was transferred by Chloe Duffy to the bank account of SN on 8 November 2022. The way the money was paid over was proposed by the Respondents.
16. The Applicants paid the Respondents a tenancy deposit of £500 on 8 November 2022.
17. A second deposit payment of £500 was requested by the Respondents from Kerr Hall on 23 February 2023 following on from JB moving out. This was not paid.
18. The Parties did not have a written agreement that had a provision or clause in it that set out in writing what the deposit Chloe Duffy paid was to cover or what could be deducted from the deposit at the end of the tenancy, such as for unpaid rent, breakages, or cleaning.
19. The Tenancy Deposit Schemes (Scotland) Regulations 2011 require a landlord to lodge any deposit they receive with a tenancy deposit scheme within 30 working days of the start date of the tenancy.
20. A tenancy deposit scheme is an independent third-party scheme approved by the Scottish Ministers to hold and protect a deposit until it is due to be repaid.
21. Where a deposit is paid under a written tenancy agreement, such as under a model private residential tenancy agreement, the agreement provides a contractual framework for reasonable costs for anything the tenant might be liable for to be deducted from any deposit at the end of the tenancy. The Parties had no such contractual arrangement.
22. The bedroom that Chloe Duffy occupied in the Property was carpeted. It had been occupied by SN before her. It had not been inspected by the Respondents between SN moving out and the Applicants moving in.

23. The Applicant Chloe Duffy scorched the carpet in the bedroom of the Property with electric hair straighteners and damaged it. Whilst initially concealing this, she admitted her culpability to the Respondents and offered to rectify it.
24. The damage to the carpet was viewed by the Respondents on 12 December 2022.
25. The Respondents agreed to allow Chloe Duffy to patch repair the carpet, specifying that it was to be done to a professional standard and could be done using spare carpet that was available from them.
26. What was meant by a 'professional' standard was not canvassed between the Parties. Notwithstanding, Chloe Duffy secured the services of David Gordon, who knew her parents and who was said had a business carrying out such work. He patched the carpet to repair it using the carpet provided.
27. The Respondents were aware of the work done and had the opportunity to view it. They did not raise any immediate concerns regarding the quality of the repair.
28. The Parties are unable to agree on events thereafter, with regards to the repair being satisfactory or not, with the Applicants stating that the Respondents were happy with it and the Respondents saying they were not happy with it as it was a poor job.
29. The tribunal was not given any documentation about the repair that had been done. Simply that a patch of carpet had been stuck down.
30. The tenancy between the Applicants and the Respondents ended when they moved out around 30 June 2023.
31. The Respondents produced an Invoice dated 7 July 2023 for uplift, disposal, and replacement of a carpet to include supply of underlay a new carpet and fitting, totalling £508.40.
32. The Applicant seeks a payment order for £500 for return of the monies she paid to the Respondents through SN as a deposit.
33. The Respondents in this application seek to have deducted from the £500 paid the cost of the aforesaid replacement carpet and costs. They cited the scorching to the carpet and that the carpet had a large brown stain on it.
34. The large brown stain was not attributed specifically to the fault of the Applicants.
35. The Respondents were dissatisfied with other aspects of the cleanliness of the Property when all of the tenants had moved out, but those matters did not form part of this dispute.
36. SDS were advised on 17 February 2023 by the Respondents by telephone that SN had moved out. This is the only specific date that was established by the evidence on the matter. SDS was advised then by the Respondents that the Applicant Chloe Duffy had given SN her share of the Deposit. At that time JB had also moved out and her position on her deposit was also discussed with SDS.
37. The Parties could have utilised a tenancy deposit scheme dispute resolution mechanism to settle the dispute over the cost of the repair to the damaged carpet, had the deposit paid by the Applicants (and more specifically by Chloe Duffy) been deposited and registered in the SDS scheme under her name. The monies she paid as a deposit were not registered in her name with SDS. Accordingly, the tenancy deposit scheme dispute resolution mechanism could not be utilised in this dispute.

38. The Respondents had singularly utilised the SDS tenancy deposit scheme dispute resolution mechanism to seek return of the full £500 being the deposit initially placed under the name SN, but the Applicants were unaware of this as they were not party to the procedure.
39. There was no tenancy agreement between the Parties or written document setting out the terms of the tenancy at the outset that related to a tenancy deposit, what it was to be used for, or set against in the event of a dispute.
40. A patch repair to the carpet was done with the consent of the Respondents.
41. The tribunal was not given any information, documents or professional evidence to inform it what should have been done to achieve a professional standard.
42. There was no standard that the tribunal could apply to determine whether the patch repair to the carpet was carried out properly or improperly, or professionally, based on the evidence before it. In other words, the tribunal has not been given sufficient material or details to decide.
43. The tribunal makes no deduction from the £500 paid as a deposit.
44. The tribunal finds that the Applicants are entitled to be repaid by the Respondents the deposit of £500 without deduction.
45. An Order for payment of £500 to be paid by the Respondents to Chloe Duffy is granted.

## **Reasons for Decision**

1. The tribunal saw from the paperwork produced that the two bedroomed Property had initially been let to two women, SN and JB. One of them was known to Chloe Duffy and when SN moved out without notice the Respondents were approached and asked to allow her to move in, which meant the Applicants moved in. When Chloe Duffy moved in her partner also stayed at the Property. The other tenant JB then decided to leave.
2. The usual formalities that should have been followed to set up the tenancy were not followed, and the Respondents came to regret this. It also caused the Applicants to have concerns about where the £500 deposit money went after it had been paid into the bank account of SN and whether it was in an approved scheme in their names. This arrangement of bank transfer had been proposed by the Respondents as the way to effectively refund SN her deposit and have the Applicant Chloe Duffy pay a deposit. A second deposit payment of £500 was requested by the Respondents from Kerr Hall on 23 February 2023 following on from JB moving out. This was not paid.
3. Whilst £500 was paid over and was understood to be a deposit, the specifics of what was to be done with it and what it was for were not set out in writing or agreed verbally.
4. The formalities required by SDS to allow for the paperwork to be corrected to show Chloe Duffy (or both Applicants) to be the new tenant and for the £500 to be attributed to her were not followed and not dealt with timeously.
5. The Respondents discovered that the bedroom carpet had been scorched and damaged by electric hair straighteners. Whilst the Applicant Chloe Duffy initially tried to conceal this from the Respondents as she was worried about it, she later accepted culpability for the damage and the Respondents agreed to a repair done to a professional standard and by way of a patch. A patch

repair was done by someone who the Applicants believed qualified to do such a job and thought the Respondents had agreed that it was carried out satisfactorily. The Respondents gave their position as being that they ultimately considered the patch repair to be poorly and unprofessionally done and then later renewed the carpet in the bedroom. They had in mind that the carpet also had a large brown stain on it. This was not specifically attributed to the Applicants. They were seeking the full replacement costs of a carpet underlay and fitting to be deducted from the Applicants claim before the tribunal.

6. There were no written or contractual terms that could be applied by the tribunal to the dispute. There was no tenancy term in writing nor any document of tenancy terms provided that could show what such a deposit could be used for or set against. A patch repair to the carpet had been agreed with a proviso that it would be to a professional standard, but the tribunal was not given the information that it could have used to determine a standard against which the work could be scored. The tribunal came to its decision based on what it had before it and stopped itself from speculating on such matters.
7. When a dispute with SDS was raised to claim the deposit by the Respondents under the tenancy deposit scheme dispute resolution mechanism there was a fatal flaw in the procedure because the Applicant Chloe Duffy or the Applicants were not a Party to it. The Respondents were repaid the deposit held with SDS because in the SDS's words, " the repayment proposal was entered on 12 July 2023 for the deposit to come back(to the Respondents) under the heading 'damage to the property' this then timed out on 24 August and payment was made on 25 August 2023".Behind that SDs had noted that SNs name was still on the deposit account and a copy tenancy agreement with Chloe Duffy had not been provided, but asked for by SDS presumably to correct their records. The Applicants had no recourse to dispute resolution through SDS.
8. In summary, there was no dispute that £500 was paid by the Applicants through Chloe Duffy to the Respondents and via the bank account of SN as a tenancy deposit. Ordinarily, a deposit is returned at the end of a tenancy unless a valid claim can be made against it by the landlord. To make a valid claim there has to be provision for a claim to be made. In this case there was no contractual framework or any other written framework for consideration. The SDS framework for settling any dispute over the deposit was flawed and the Applicants could not utilise it to participate even if they had been told about it.
9. The tribunal was asked to decide if the carpet repair had been carried out to a professional standard or not. The information before the tribunal at the hearing was insufficient to allow the tribunal to decide on that. Had there been sufficient material before the tribunal to determine that the repair had not been carried out to a professional standard, the tribunal would have had to go on to consider why, after a repair had been agreed upon that the Respondents subsequently considered that a repair was no longer sufficient and that a full replacement was justified at the sole expense of the Applicants.
10. Had the tribunal alternatively decided that the repair had been carried out poorly, the tribunal would not have found that the Respondents, having

accepted a repair to the carpet and without further specifics, had any entitlement to then insist on a deduction from the deposit of the full cost of replacement of the carpet at the costs claimed, including underlay. The tribunal would have had to consider whether Respondents took reasonable steps in mitigation of their loss, in relation to the fault or negligence of Chloe Duffy.

11. The videos of the Property provided by the Applicants showed the carpet in the bedroom that the Applicants occupied. The tribunal was unable to point out from viewing it the patch repair itself or any other information that might have assisted it.

### **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.**

# S. Christie

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**Legal Member/Chair**

**14 February 2024**  
**Date**