



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/21/3072

Re: Property at 111 Headland Court, South Anderson Drive, Aberdeen, AB10 7HW (“the Property”)

Parties:

CITY 06 LLP T/A Aberdeen Letting Centre, Suite D1, 4/5 Golden Square, Aberdeen (“the Applicant”)

Mr Humphrey Emenike, Mrs Constance Tobechukwu, 3 Balquharn Circle, Portlethen, Aberdeenshire, AB12 4AH (“the Respondents”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondents shall make payment to the applicant the sum of four hundred and ninety two pounds and thirty six pence (£492.36).**
- 2. This was a case management discussion (‘CMD’) in connection with an application in terms of rule 70 of the First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2016, (‘the rules’) and s16 of the Housing (Scotland) Act 2014, (‘the Act’). Ms Carole Ogston and Mr George Mccahery attended on behalf of the applicant and the first named respondent attended. The second named respondent attended for part of the CMD.**
- 3. The tribunal had before it the following copy documents:**
 - (1) Application dated 9 December 2021.**
 - (2) Email from Kevin Allan Painter and Decorator with quote of £120 for extra preparation before painting.**

- (3) Email dated 15 November 2021 from accounts at aspect Aberdeen to the applicant.
- (4) Invoice from Buy Spares for £56.16.
- (5) 'What is wear and tear' article dated 22 February 2021.
- (6) 62 photographs of the property.
- (7) Tenancy agreement.
- (8) Respondent's written submission dated 4 March 2022
- (9) Undated statement of George Mccahery.
- (10) Invoice from Howdens dated 11 January 2022.
- (11) Invoice from AJM plumbing dated 23 February 2022.
- (12) Invoice from Sparke Clean.
- (13) Invoice from Aspect Flooring and Blinds Ltd.
- (14) Invoice from Steves Joinery Service dated 14 January 2022.
- (15) Worksheets for the property dated 14 November 2016 to 3 November 2020.
- (16) EPC from 2018.
- (17) Applicant's submissions dated 22 March 2022.

Preliminary matter

- 4. The tribunal sought to ascertain what the applicant was seeking, as the original application was for £578.36 and the applicant had lodged further documents on 22 March 2022 which suggested that further sums were being sought. Ms Ogston submitted that the further documents had been submitted for the sake of completeness and the sum now being sought was £492.36.

The applicant's position.

- 5. Ms Ogston submitted that the sum of £492.36 was made up as follows:

• Decorating costs	£120
• Cleaning	£ 64
• Carpets	£277.20
• Worktop	£75
• Fridge freezer	£56.16.
• Less deposit	£100
Net sum due	£492.36.

Ms Ogston was not seeking anything in respect of the replacement light fitting as the respondents had supplied a new light fitting and she was not seeking anything in respect of the electrical cost of installing the new light.

Decoration costs

6. Ms Ogston submitted that there were several issues with the condition the property was left in by the respondents and she was seeking the sum of £492.36 as detailed above. With regard to the decoration costs, it was her submission that the sum of £1840 had been incurred to redecorate the property throughout. She accepted that most of this sum was due to fair wear and tear as the respondents had occupied the property since 2016. She was however seeking the sum of £120 under this head of claim as this additional sum had been incurred as there were pen marks on the walls as was borne out by the photographs lodged. She submitted that the decorator who provided the quotation advised that the pen markings could only be covered by additional work rather than by usual painting. She submitted that the sum of £120 was for additional work as a result of the damage to the décor and it was not covered by fair wear and tear. Ms Ogston had lodged an invoice for the redecoration. As it was undated and was not receipted, she lodged evidence of the payment by bacs transfer during the course of the hearing.

Cleaning

7. Ms Ogston submitted that when the application was made it was estimated that the cleaning would be in the region of £150. The actual cost was £64 and she had produced an invoice for this sum. This was why she was not seeking a reduced sum of £492.36 rather than the sum of £578.36 originally claimed.

Carpets

8. Ms Ogston submitted that two of the carpets had been damaged during the respondents' period of occupation and the damage went beyond fair wear and tear. She made reference to the photographs lodged with the application. She submitted that the 54 photographs lodged with the application were taken by her after the respondents left the property. She made reference to two photographs which showed carpets with a large iron mark. She submitted that both the lounge and one of the bedrooms had a large burn caused by an iron. She submitted that the flooring had been replaced throughout the property at a cost of the property at a cost of £1393.20. The carpet for the bedroom was £288 plus vat and the lounge was £174 plus vat. She submitted that the damage to the carpets was

beyond fair wear and tear and the sum of £277.20 sought was one half of the cost of replacing the two carpets.

Fridge freezer

9. Ms Ogston submitted that the sum of £5616 had been incurred in replacing a broken shelf and two drawer fronts. It was her submission that the freezer would have been in full working order when the respondents took entry. Mr Mccahery stated that the full kitchen was replaced after the respondent took entry, around 2016, and the freezer was brand new at that time.

Worktop

10. Ms Ogston submitted that the worktop was damaged during the respondents' period of occupation, and the damage was beyond fair wear and tear. She made reference to photographs of the damaged worktop and the invoice in respect of the replacement worktops.
11. The applicant submitted in the application that most of the deposit of £650 had been used up in rent arrears as the respondents had persistently paid their rent at the end of the month rather than the start of the month as required by the tenancy agreement.

The respondents position.

12. Mr Emenike did not dispute that there were pen marks on the walls caused by his two young children. He did dispute that any specialist work would be needed to cover up the marks. He submitted that he was in the process of trying to cover up the marks when the applicant inspected the property, and he was told not to continue with his work. Mrs Tobechukwu submitted that the lockdown was difficult with two young children in a flat and they could not be watched all of the time.
13. Mr Emenike conceded that the property was not left as clean as he would have liked, and he did not dispute that the sum of £64 was reasonable in the circumstances.
14. The respondents did not dispute that the lounge carpet had been damaged by a hot iron falling on it. They did not appear to accept that a bedroom

carpet had been damaged in the same way. They submitted that the sum of £100 was a reasonable under this head.

15. Regarding the freezer Mr Eminike stated that the freezer was 'fine' and he had personally cleaned it. Neither he nor his wife disputed that the freezer was fitted as part of a new kitchen in 2016. They did not dispute that the applicant had lodged photos of a damaged freezer and had purchased new drawers to replace the broken ones.

16. The respondent did not accept that the damage to the worktop was beyond fair wear and tear expected after several years of occupation.

Discussion

17. The applicant was seeking a sum from the respondents which was a small proportion of the money outlaid by the applicant in replacing the carpets, worktop, freezer drawers and in cleaning and redecorating the property. It was their position that they were only seeking a proportion from the respondents under each head of claim, in comparison to the large sums they have incurred. The damage caused exceeded fair wear and tear. Ms Ogston made reference to item (5) above from the LAS regarding fair wear and tear. The document gives three examples of what constitutes fair wear and tear and what constitutes damage. A worn carpet is classed as wear and tear whereas a burn is considered damage. Scuffs to paintwork are considered wear and tear whereas pen marks are considered damage. A crack in a salad drawer in a fridge is considered damage and not wear and tear. The respondents did not dispute that these sums had been incurred by the applicant, but it was their view that after renting the property for several years, the landlord would require to redecorate and should not expect the tenants to pay for what is essentially fair wear and tear.

Findings in fact

- 18.
- The applicant is the owner of the property.
 - The parties entered into a short assured tenancy agreement for let of the property on 28 January 2016 for the initial period of one year and month to month thereafter.
 - The initial rent was £650 but this was reduced to £550 due to the pandemic.
 - The tenancy came to an end on 30 September 2021 when the respondents left the property.
 - The property was left in a dirty condition by the respondents.
 - Some of the fixtures and fittings were damaged during the respondents' period of occupation which went beyond fair wear and tear.

- There were pen marks on several of the walls which were incurred during the respondents' period of occupation.
- There were burns to the lounge carpet and one of the bedrooms which were incurred during the respondents' period of occupation.
- Two of the drawers and one of the shelves of the freezer were damaged during the respondents' period of occupation.
- The kitchen worktop was damaged with pot burns during the respondents' period of occupation.
- The applicant incurred costs in replacing the carpet, worktop and freezer drawers.
- The applicant incurred costs in cleaning the property, in redecorating and in replacing the damaged items in the region of £4640.30
- The sum of £1840 was incurred in redecoration costs and £120 of this total was incurred in additional work to cover the pen marks.
- The sum of £65 was incurred in cleaning costs.
- The sum of £56.16 was incurred in replacing the freezer doors.
- The sum of £554.40 was incurred in replacing the two carpets and the applicant was seeking one half of this sum, namely £277.20.
- The sum of £437 was incurred in replacing the worktops and the applicant was seeking £75 from the respondents in connection with the damage caused to the worktop.
- The applicant's losses in cleaning, redecoration and replacing the items damaged are £592.36.
- The respondents paid a deposit of £650.
- £550 of the deposit was applied to rent for the final month of the respondents' occupation.
- The remaining £100 was applied to the outstanding costs.
- The net sum due to the applicants is £492.36.

Reasons.

19. In terms of rule 17 of the rules the tribunal may do anything at a CMD that it can do at a hearing, including making a decision. The tribunal was satisfied that it had sufficient information before it to make a decision and the procedure had been fair. The respondents accepted that the property was not clean when they left, and they accepted the lounge carpet was damaged and their children had drawn on the walls. The respondents did not appear to accept that the bedroom carpet, worktop and freezer drawers had been damaged by them, but they had been given fair notice of the photographs lodged and their position seemed to be that after 6 years in occupation the landlord has to expect some damage. The respondents also stated that they had purchased paint and were in the process of covering the marks on the wall when they were stopped by the applicant. The applicant's submission was that the walls would require to be painted by a profession and several coats would be needed to cover the pen marks.

20. Clause 16 of the short assured tenancy agreement provides:

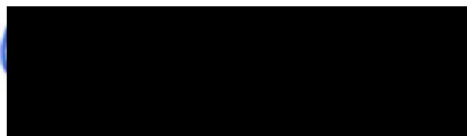
The Tenant accepts that the Property including internal decoration and the furniture and furnishings are in good tenantable repair as at the date of entry and undertakes to return same in like condition of the Proprietor at the termination of the lease. The Tenant will be liable to pay for all breakages, damages and deficiencies affecting the Property or the furniture or furnishings (fair wear and tear being expected) which shall be assessed at the termination of the lease by the Proprietor acting reasonably and whose decision shall be final as to the amount to be paid for loss or damage to any article.

21. The applicant had produced vouching for all of the sums claimed and the tribunal was satisfied on the balance of probability that the damages caused to the property were incurred during the respondents' period of occupation and they were not the result of fair wear and tear. The tribunal was satisfied on the balance of probability that the applicant had made out their case for damages to the property and that the sums sought were reasonable in all of the circumstances.

22. The respondents were offered the opportunity to make a time to pay application. They declined to do so at the conclusion of the CMD and it was explained to them that they may lodge a time to pay application and ask for a hearing in relation to 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.



Lesley A ward Legal Member

27 May 2022

Date