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 of the Private Housing (Tenancies) (Scotland) Act 2014

Chamber Ref: FTS/HPC/CV/22/4329

Property : 16/2F Murrayfield Avenue, Edinburgh EH12 6AX ("Property")

Parties:

Esperanza Locuna, 91 Clerwood Park, Edinburgh EH12 8PS ("Applicant")

Frances MacDonald, 4 Castlebar Park, London W5 1BX ("Respondent")

Tribunal Members:

Joan Devine (Legal Member)

Decision
The First-tier Tribunal for Scotland (Housing and Property Chamber) ("Tribunal") determined that an order for payment of £583.75 should be made.

Background

The Applicant sought an order for payment of £797.10 being the balance of the deposit of £1200 paid by the Applicant which had been retained by the Respondent. The Applicant had lodged Form F. The documents produced were: a written submission; a Tenancy Agreement dated 5 January 2016; a deposit statement from ESPC Lettings dated 6 October 2022; a deposit certificate from Safe Deposits Scotland ("SDS") dated 22 January 2016 referring to a deposit of £1200 and a copy email from SDS dated 18 November 2022.

On 4 April 2023 the Respondent lodged a written submission along with a copy of an email from the Respondent to the Applicant dated 20 January 2023; check in report; a further copy of the check in report with comments noted and photographs of the Property. On 2 June 2023 the Respondent lodged a check out report for the Property dated 6 September 2022.

Case Management Discussion ("CMD")

A CMD took place before the Tribunal on 2 June 2023 by teleconference. The Applicant was in attendance as was the Respondent. The Applicant's husband, Luis

Sanchez, attended as a supporter. The Tribunal noted that the sum claimed in the Application was £797.10 but in the written submission the Applicant accepted that £123.75 had been properly deducted. This reduced the sum claimed to £673.35. The Applicant confirmed that was correct.

On 19 May 2023 the Respondent submitted a written representation to the Tribunal in which she noted that the Applicant had not taken part in the SDS process for resolving disputes regarding a deposit. In light of that the Respondent submitted to the Tribunal a complaint that the appropriate process had not been utilised and asked for the CMD to be cancelled. At the commencement of the CMD the Tribunal asked the Respondent to make her submission on that preliminary point.

The Respondent said that the Applicant did not engage in the SDS process to resolve any dispute nor did she contact the Respondent to discuss any dispute. She said that the first she heard about any dispute was after the application had been made to the Tribunal. She said that she was a reasonable landlord and the current process was a waste of time which set a bad precedent. The Applicant said that there was a problem with the SDS website which meant she was unable to engage in the process. She said that she did contact the Respondent by email on 20 January 2023 but the Respondent did not reply. The Tribunal noted that the Application was submitted on 3 December 2022.

The Tribunal explained that there was nothing in the procedure rules of the Tribunal or in the Tenancy Deposit Schemes (Scotland) Regulations 2011 which said that a failure to engage in the SDS process was a bar to making the Application. In those circumstances the Tribunal would proceed.

The Tribunal noted there were a number of deductions from the deposit and reviewed each with the Parties as follows :

Damage to bath panel - £220

The Tribunal noted that in the written submission the Respondent seemed to accept that this deduction should not have been made. The Respondent confirmed that was correct.

Damage to kitchen worktop - £290

The Respondent directed the Tribunal to page 11 of the check out report and the third line of photographs. She said that the worktop next to the sink was discoloured and was a pale grey colour unlike the worktop elsewhere in the kitchen which was black. She said that the kitchen was only two years old at the start of the tenancy.

The Applicant said that she used regular cleaning products on the worktop. She accepted the area beside the sink was discoloured but said that was not damage.

The Tribunal asked the Respondent if she replaced the entire worktop or only the area that was discoloured. She said she did not replace any part of the worktop due to the cost. The Tribunal asked what the deduction of £290 was in respect of if the worktop had not been replaced. The Respondent said that she would replace the worktop in the future. The Tribunal asked when that would be. She said she would probably replace it when the current tenants vacated.

Redecoration of damaged wall - £23.75

The Applicant accepted this was an appropriate deduction.

Damage to kitchen linoleum - £73.75

The Applicant said that the linoleum was never properly attached to the floor. She said that it was ripped when a new washing machine was installed. The Tribunal asked if the contractor installing the washing machine had caused the damage. The Applicant said that it was.

The Respondent said that the Applicant had not told her that a contractor had ripped the linoleum. She referred the Tribunal to the check out report page 11 and the bottom row of photographs which showed the ripped linoleum in front of the washing machine. She said that the washing machine was generally pulled out from its location which was unnecessary as it could be fully pushed back under the worktop. She said that she had not been happy with the linoleum as the fitter did not remove the kick plates when installing the linoleum. She said that the deduction of £73.75 was 25% of the cost of replacing the linoleum. She said that she replaced the linoleum as it was ripped and she had not been happy with the way it had been fitted. The Tribunal asked the Respondent if she would have replaced the linoleum even if it had not been ripped. The Respondent said that she probably would have replaced it even if it had not been ripped as it had been subject to general wear and tear.

Damage to common stairwell - £189.60

The Tribunal noted that the Applicant accepted that £100 should have been deducted from the deposit as damage was caused to the stairwell.

The Respondent said that the deduction was 50% of the cost of painting the dado in the stairwell. She said that the Applicant kept bicycles in the stairwell that caused damage. Photographs had been lodged showing the bicycles in the stairwell. She said that on numerous occasions the Applicant was asked not to leave bicycles in the stairwell. She said that the dado had been repainted mid way through the tenancy. It

was only done again at the end of the tenancy because of damage caused. She said that she was unable to match the original colour which was why the entire stairwell was repainted but she had only deducted 50% of the cost from the deposit.

The Applicant said that the Property was on the top floor. She said that she accepted that damage had been caused by storing bicycles but other people also caused damage. The Tribunal asked if anyone else stored bicycles in the part of the stairwell that lead from the first floor to the upper floor occupied by the Applicant. The Applicant said they did not. The Tribunal asked who else had caused damage in that part of the stairwell. The Applicant could not say.

The Tribunal asked Parties if there was further information that they wished to put before the Tribunal at an evidential hearing. Both Parties said that there was not. The Tribunal expressed the view that it had sufficient information to allow it to make a decision and asked Parties if they were content for the Tribunal to proceed to do that. Both Parties said that they were content for the Tribunal to make a decision on the basis of the information provided.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 5 January 2016 ("Tenancy Agreement").

2. In terms of the Tenancy Agreement the Respondent accepted liability for the cost of repairs where the need for them is attributable to her fault or negligence.

3. The Respondent did not incur any cost to repair or replace the worktop in the kitchen.

4. The Respondent would have replaced the linoleum in the kitchen even if it had not been damaged.

5. The Applicant caused damage to the dado in the upper stairwell by storing bicycles.

6. The Respondent incurred a cost of £189.60 to paint the dado in the upper part of the stairwell.

Reasons for the Decision

At the outset of the CMD the Applicant reduced the sum claimed to £673.35. In the course of the CMD the Respondent conceded that a deduction of £220 in respect of a damaged bath panel should not have been made. This left in dispute £290 in respect

of damage to the worktop, £73.75 in respect of damage to kitchen linoleum and £89.60 in respect of damage to the stairwell (the Applicant having accepted liability for £100 of the sum deducted by the Respondent).

The Tenancy Agreement sets out the contractual relationship between the Parties. The relevant sections are :

Section 9 deals with repairs to structure of subjects and provides that the landlord must ensure the Property meets the repairing standard at all times during the tenancy and notes that this does not cover work for which the tenant is responsible due to the tenant's duty to use the subjects in a proper manner.

Section 11 deals with furnishings and fittings. In this section the tenant accepts the fittings and fixtures as being in good order and repair, other than as is specified in the inventory, and notes that the tenant is obliged to keep them in like condition with the exception of ordinary wear and tear.

Section 29 provides that the tenant will be liable for the cost of repairs where the need for them is attributable to his fault or negligence.

As regards the deduction for damage to the worktop, the Applicant said that the discolouration was due to wear and tear. The Respondent disputed that but told the Tribunal that she had not actually replaced the worktop. She had not incurred any costs as a result of the discolouration. The Respondent had suffered no loss. In those circumstances even if the discolouration was not wear and tear and was due to the fault of the Applicant, it was not a proper deduction from the deposit.

As regards the deduction for damage to the kitchen linoleum. The Applicant said this was caused by a contractor fitting a washing machine. The Respondent had not been told that was the case. It was her position that the linoleum was not damaged at the start o the tenancy but was damaged at the end. The Respondent told the Tribunal that she was not happy with the way the linoleum had been fitted and that it had been subject to general wear and tear. She said she would have replaced it even if it had not been ripped. In those circumstances the cost incurred by the Respondent was not due to the fault of the Applicant and was not a proper deduction from the deposit.

As regards the deduction for damage to the common stairwell the Applicant accepted she stored bicycles in the stairwell and that damage was caused by that. She said that others caused damage but she could not say who caused the damage or how that occurred. The Property is on the top floor which means that generally, the stairwell in that part of the building would be used by those occupying the Property. This was a proper deduction from the deposit.

The deductions of £220 in respect of a damaged bath panel, £290 in respect of damage to the worktop and £73.75 in respect of damage to kitchen linoleum were not proper deductions. These items total £583.75. This amount should be repaid to the Applicant.

Decision

The Tribunal grants an order for payment of £583.75.

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.

Joan Devine

Joan Devine
Legal Member **Date : 2 June 2023**