



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 (“the 2014 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/19/3988

Re: Property at 28 Robertson Road, Dunfermline, Fife, KY12 0AS (“the Property”)

Parties:

**Miss Karolin Vosu, 50 Hawthorn Terrace, Thornton, KY1 4DZ
 (“the Applicant”)**

**Mr John Nicol, 28 Robertson Road, Dunfermline, KY12 0AS
 (“the Respondent”)**

Tribunal Members:

**Ms. Susanne L. M. Tanner Q.C., Legal Member and Chair
 Ms. Ann Moore, Ordinary Member**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondent should pay to the Applicants the sum of FIFTY POUNDS (£50.00) STERLING; and made an Order for Payment in respect of the said sum.

1. Procedural background

- 1.1. The Applicant made an Application to the tribunal on 17 December 2019 in terms of Section 16 of the 2014 Act and Rule 111 of the 2017 Rules, seeking an order for payment against the Respondent in the sum of

£140.00 in respect of part of her deposit money not refunded to her by the Applicant and retained by him.

- 1.2. The Application documentation submitted by the Applicant comprised:
 - 1.2.1. A copy of a lodger document between the parties for the Property dated 4 September 2019;
 - 1.2.2. Screen shots of bank payments;
 - 1.2.3. Fife College payment schedule; and
 - 1.2.4. A handwritten promise by the Respondent to repay £200.00 to the Applicant in respect of overpaid rent.
 - 1.2.5. On 24 December 2019, the tribunal requested further information from the Applicant; and on 7 and 13 January 2020 the Applicant provided further information.
- 1.3. On 13 January 2020, the Application was accepted for determination by the tribunal.
- 1.4. By letter of 20 January 2020, parties were notified of the date, time and place of a Case Management Discussion (“CMD”) on 21 February 2020 at Fife Voluntary Action, 16 East Fergus Place, Kirkcaldy. The Respondent was invited to submit written representations to the Application by 10 February 2020. The Respondent was personally served by Sheriff Officers with the Application documentation and notice of the date, time and place of the CMD.
- 1.5. Written representations and documents were submitted by both parties in advance of the CMD.
- 1.6. A CMD took place on 21 February 2020 in relation to this Application. Reference is made to the Notes of the CMD in relation to this Application. The CMD adjourned on 21 February 2020 for settlement discussions to take place between the parties but they did not lead to resolution of the case. The Applicant advised the tribunal that it was her intention to make an additional application to the tribunal in respect of the Respondent’s failure to lodge the tenancy deposit in a scheme. Thereafter a hearing was fixed by the tribunal on a date to be fixed.
- 1.7. The Notes of the CMD were sent to both parties by the tribunal.

- 1.8. Due to the Covid-19 pandemic, it was directed that the hearing would take place by teleconference. A hearing was fixed for 3 August 2020 at 1000h, in this and the related application, by teleconference and both parties were notified of the date, time and arrangements for joining.

2. Hearing – 3 August 2020 by teleconference

- 2.1. The parties both attended the teleconference hearing.
- 2.2. The tribunal chair read through the notes of the Case Management Discussion and both parties agreed with the record of what had been discussed and agreed.
- 2.3. The issue in dispute was a fairly narrow one, namely whether the Respondent was entitled to retain any amount from the Applicant's deposit of £200.00 in respect of the cost of replacement of a damaged wardrobe, and if so whether the amount claimed of £140.00 (£180.00 less £40.00 for wear and tear) was reasonable.
- 2.4. The Applicant stated that she was seeking repayment of the full amount of £140.00 as she did not think that any deduction for the wardrobe should be made. She also stated that she thought that if she was responsible, the Respondent could have bought a similar wardrobe for less than £180.00.
- 2.5. The Respondent stated that originally he was going to retain the full deposit because of the damage that was done during the Applicant's tenancy, including the period when she was sub-letting to her friends with his agreement. He stated that the wardrobe and bed were not damaged when she moved in and that they were damaged when she moved out. He said that there was one towel missing in the bathroom at the end of the tenancy. There was also a knob from a chest of drawers missing at the end of the tenancy, that had been there at the start. In relation to the bed the Respondent stated that he repaired this himself. In relation to the wardrobe door, he stated that it was fine at the start of the tenancy but at the end of the tenancy, it was in two bits and fell apart when he checked it after the sub-tenants had moved out. He stated that he arranged for his nephew, who is a joiner to look at it and he said that there was nothing he could do with it. He stated that the wardrobe was damaged beyond repair. He stated that he priced up the wardrobe and thought he could get one for £180.00. He made an allowance for £40.00 for wear and tear. He did not propose any deductions for the towel, the damage to the bed or the

missing knob from the drawers. He stated that the only deduction was for the wardrobe. He refunded £60.00 to the Applicant and retained £140.00 in respect of the wardrobe. He stated that when the Applicant moved into the Property there was no inventory provided to her as he was about to go on tour. However, the Applicant had been into the room and checked everything to make sure that all was ok. When everybody moved out he checked the room and observed the damage. He stated that it was always agreed that if friends stay the tenant is liable for any damage that they caused.

- 2.6. The Respondent stated that at the Case Management Discussion, he had offered to make payment to the Respondent of the full amount sought, to settle all matters between them in relation to the deposit but that she had declined to accept the offer.
- 2.7. In response to questions from the Chair he stated that the wardrobe was purchased a few years earlier and that he thought he had paid about £250.00 for it. He stated that there was nothing wrong with the door at the start of the tenancy. He described it as a panelled wardrobe door on a pine wardrobe. It is dowelled together. At the end of the tenancy, one side of the dowels had broken off. He could not get the dowels off and he could not replace them because of the style of the wardrobe. The one he priced on ebay was a secondhand one and was only one year old. He stated that he has not actually purchased another wardrobe. He referred to the photographs he had taken and lodged. These were taken at the end of the tenancy. Photograph 4 shows one door on the wardrobe. That is the door which is broken from the top to the bottom. He held it in place for the photograph. He stated that it was not like that at the start of the tenancy.
- 2.8. The Applicant stated that the wardrobe was already broken when she moved in but stated that it was not as bad as it was at the end of the tenancy. She stated that things get broken in time anyway and that she should not be responsible. She agreed that she had the opportunity to check everything when she moved in. She stated that she had noticed that the wardrobe was loose but had not said anything to the Respondent at any time. She stated that she was careful with it. When asked why she had not told the Respondent, she stated that she had wanted to tell him but she thought that there would be an inventory in the first five days. She said that she had no reason to think that there would be an inventory as it was not mentioned in the tenancy agreement and the Respondent did not tell her that there would be an inventory. She stated that when the inventory did not show up she forgot about the wardrobe. She moved out of the property after a few days and then arranged for her friends to move

in at the end of September or beginning of October 2019. She did not inspect the Property either before her friends moved in or at the end of their occupancy on 21 December 2019. She stated that her friends paid her £85 per week, every two weeks, and that she paid rent to the Respondent at the rate of £340 per four weeks, with £200 going directly to the Respondent from the college and her making up the remainder from rent paid to her by her friends. She stated that she used the rest of the money from her friends to pay rent at another property.

2.9. The Applicant stated that if she was responsible for replacement of the damaged wardrobe, she is pretty sure that you can get a wardrobe cheaper than £180.00

2.10. The Respondent replied and stated that there was nothing wrong with the wardrobe and she checked the room prior to the tenancy starting on 6 September 2019. She stated to him that it was all checked. He stated that there was nothing wrong with the furniture in the whole house and that he did not see the point of letting out a property with broken furniture.

3. Findings-in-Fact

3.1. The Applicant paid to the Respondent a deposit of £200.00 in respect of her tenancy of the Property on or about 5 September 2019.

3.2. The tenancy ended on 21 December 2019.

3.3. During the tenancy, the Applicant sub-let the Property to two friends, with the consent of the Respondent.

3.4. The Property was furnished and the furnishings included a pine wardrobe, which was around two to three years old and cost £250.00 when purchased.

3.5. The wardrobe was not damaged at the start of the tenancy.

3.6. The wardrobe was damaged beyond repair at the end of the tenancy.

3.7. The wardrobe was damaged by the Applicant or by her friends to whom she sub-let the Property, with the consent of the Landlord.

3.8. The Landlord obtained a quote for a secondhand wardrobe as a replacement for the damaged wardrobe at a cost of £180.00.

3.9. The Landlord should have expected fair wear and tear of the wardrobe, over the period from its purchase, including the period of the tenancy.

4. Discussion

4.1. The tribunal considered that the Applicant was responsible for the damage to the wardrobe during her tenancy, whether that was during the time she lived in the Property or during the time over which she sub-let it to her friends. The Respondent claimed £180.00 for the cost of replacing the wardrobe, which was two to three years old at the start of the tenancy, with a one year old wardrobe from Ebay. He made an allowance for £40.00 wear and tear of the original wardrobe. The tribunal considered that the cost of £180.00 was reasonable for the cost of a secondhand wardrobe of the kind to be replaced, but considered that allowance should be made for wear and tear in the sum of £90.00 owing to the age of the wardrobe being replaced and the fact that it had cost around £250.00 originally. The tribunal therefore considered that the sum of £90.00 was reasonable in respect of a contribution by the Applicant towards the cost of the replacement secondhand wardrobe.

4.2. As the Respondent has already refunded £60.00 to the Applicant by way of deposit repayment, the tribunal made a payment order for £50.00; with the Respondent retaining £90.00 from the Applicant's original deposit.

4.3. The tribunal chair informed the Applicant that the Payment Order could be enforced by the Applicant against the Respondent after the expiry of the permission to appeal period. The Respondent requested the Applicant to provide her bank details and offered to make payment by tomorrow. The tribunal facilitated that discussion taking place after the teleconference hearing and the parties undertook to correspond by text message and to send any confirmation of payment to the tribunal's administration.

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.

Susanne L M Tanner Q.C.
Legal Member/Chair

3 August 2020