



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/22/3549**

**Re: Property at 16 (2f1) Bruntsfield Avenue, Bruntsfield, Edinburgh, EH10 4EW (“the Property”)**

**Parties:**

**Mr Mark Webster, 2 Woodfield Park, Edinburgh, EH13 0RB (“the Applicant”)**

**Mr Maneesh Misra and Mrs Chetana Ramappa Bangera or Misra, Flat 55, 2 McEwan Walk, The McEwan, Edinburgh, EH3 8FS (“the Respondents”)**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment against the Respondents in favour of the Applicant in the sum of TWO THOUSAND FIVE HUNDRED AND SIXTY-ONE POUNDS AND SIXTY-NINE PENCE (£2561.69) STERLING. The order for payment will be issued to the Applicant after the expiry of 30 days mentioned below in the right of appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondents.**

**Background**

- 1. This is an application dated 27 September 2022 made by the Applicant’s letting agent for an order for payment for damages under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Regulations”).**

2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties starting 5 December 2019, an invoice dated 15 July for £2856 from W L Forrest, Painter and Decorator, an invoice dated 7 July 2022 for £364.19 from Home Mending Don, an invoice dated 28 June 2022 for £239 from Curry's, an invoice dated 5 July 2022 for £237.50 from Wilma Webster, an invoice dated 21 July 2022 from Roy Glen (Cleaning Services), an email dated 27 July 2022 from Safe Deposits Scotland, an Inventory and Schedule of Condition dated 3 December 2019 and an Inspection Report dated 15 June 2022
3. On 30 November 2022 the Tribunal accepted the application under Rule 9 of the Regulations.
4. On 13 January 2023 the Tribunal enclosed a copy of the application and invited the Respondents to make written representations to the application by 3 February 2023. The Tribunal advised parties on 13 January 2023 that a Case Management Discussion ("CMD") under Rule 17 of the Regulations would proceed on 28 February 2023. This paperwork was served on the Respondents by Christopher Andrew, Sheriff Officer, Edinburgh on 16 January 2023 and the Executions of Service were received by the Tribunal administration.
5. The Respondents did not make any written representations by 3 February 2023.

### **Case Management Discussion**

6. The Tribunal proceeded with a CMD on 28 February 2023 by way of teleconference. Ms MacDonell from Trinity Factoring Service appeared on behalf of the Applicant. Mr Misra appeared on his own behalf and on behalf of his wife Mrs Chetana Ramappa Bangera or Misra.
7. The Tribunal had before it the Private Residential Tenancy Agreement between the parties starting 5 December 2019, an invoice dated 15 July for £2856 from W L Forrest, Painter and Decorator, an invoice dated 7 July 2022 for £364.19 from Home Mending Don, an invoice dated 28 June 2022 for £239 from Curry's, an invoice dated 5 July 2022 for £237.50 from Wilma Webster, an invoice dated 21 July 2022 from Roy Glen (Cleaning Services), an email dated 27 July 2022 from Safe Deposits Scotland, an Inventory and Schedule of Condition dated 3 December 2019 and an Inspection Report dated 15 June 2022. The Tribunal considered these documents.
8. Ms MacDonell moved the Tribunal to grant a payment Order for £2561.69. A final inspection had been carried out on 15 June 2022 after the end of the tenancy on 14 June 2022. She explained that there was a lot of smoke damage to the walls in the flat caused by the Respondents burning incense in the flat contrary to the tenancy agreement. The whole flat had to be redecorated, including wallpaper in the lounge. The Respondents had attempted to clean the damage in places, but this had resulted in making the

staining worse. She referred to the invoice for £2856 from W L Forrest. She explained that she received a couple of quotes from contractors Trinity Factors regularly used. They all came in at about the same price. W L Forrest were the Applicant's preferred contractors, and they were accordingly instructed. She went on to explain the hob in the kitchen was smashed. She referred to the invoice from Currys which showed the cost of the replacement hob to be £179. The old hob was removed and a new one installed, the fridge/freezer had to be repaired and the radiators cleaned due to smoke damage all as set out in the invoice from Home Mending Don. The whole flat had to be cleaned. She referred to the invoices from Roy Glen and Wilma Webster. Blinds were broken at a cost of £100. Wallpaper at a cost of £35 for the living room was obtained. With reference to the email dated 27 July 2022 from Safe Deposits Scotland she explained that the total damages amounted to £4436.69 as set out in the email, that they had secured the return of the full deposit of £1875 for the Applicant leaving a difference of £2561.69. She explained that neither Respondent had referred to Safe Deposits Scotland to dispute the Applicant's position in relation to the deposit.

9. Mr Misra accepted that £2561.69 was due. He accepted the hob was broken and that the worktop was damaged. However, he felt aggrieved that Trinity Factors had not been in contact with him to discuss the works to be carried out and get his agreement for them. He explained that he felt the amount for painting the flat with reference to the receipt from W L Forrest was excessive. He submitted that he was sure that the Respondents could have obtained cheaper quotes and consulted with suppliers themselves and got the works carried out more cost effectively. On being questioned by the Tribunal as to why he had not raised these concerns when Safe Deposits Scotland were dealing with the return of the deposit at the end of the tenancy, he explained that they had not realised the importance of doing so as this was the first tenancy they had had. He had not had any communication from Trinity Factors that explained he would be liable for that amount and if he had understood that he would not have agreed to the amounts claimed.
  
10. In light of Mr Misra's submission, the Tribunal sought clarification as to whether he did or did not accept the Respondents were liable to pay £2561.69 to the Applicant. He repeated his concern that the sum of £2856 was an awful lot of money for painting the flat. However, he was unable to refer the Tribunal to any clause in the tenancy agreement that would entitle him or his wife as tenants to be consulted if the Applicant decided to carry out the works himself after the tenancy terminated. He did not have any evidence as to what a reasonable sum for painting would be. Without that he accepted that they were liable to pay £2561.69.

### **Findings in Fact**

11. The Applicant and the Respondents entered into a Private Residential Tenancy Agreement starting on 5 December 2019 for the Property. The tenancy terminated on 14 June 2022.

12. In terms of Clause 11 of the tenancy agreement the Respondents paid £1875 deposit. The deposit was lodged with Safe Deposits Scotland by Trinity Factors.
13. In terms of Clause 25 the Respondents agreed to replace or repair (or at the option of the Landlord to pay the reasonable cost of replacement) or repair the cost of any damage, fair wear and tear excepted, which was caused negligently by the Respondents.
14. The Respondents had burned incense throughout the Property causing damage to decoration and radiators. The Respondents had damaged the hob and kitchen worktop.
15. The Applicant's letting agents Trinity Factors inspected the Property on 15 June 2022 and identified damage to the decoration, blinds, fridge freezer, hob, kitchen worktop and that the Property needed cleaning. They obtained quotes for the damage to be repaired and for cleaning at a total cost of £4436.69.
16. Trinity Factors made a claim for the return of the whole deposit of £1875 to Safe Deposits Scotland. The Respondents did not make any counter representations in relation to the return of the deposit. Safe Deposits Scotland determined that the whole deposit be returned to the Applicant.
17. The amount of the remaining damages is £2561.69. The Respondents are liable to pay this sum to the Applicant.

### **Reasons for Decision**

18. The Tribunal considered the issues set out in the application together with the documents lodged in support. Further the Tribunal considered the submissions made by Ms MacDonell and Mr Misra.
19. The Tribunal noted the terms of the tenancy agreement, the invoices, and the email from Safe Deposits Scotland. Ms MacDonell had produced evidence of damage to the Property as evidenced by the Inspection Report of 15 June 2022. She had then produced invoices for replacement of the damage. She had secured the return of the full deposit from Safe Deposits Scotland. Whilst the Tribunal noted that the Respondents had not made any submissions to Safe Deposits Scotland about the return of the deposit, Mr Misra did not dispute that he and his wife were liable for the damage to the Property. He admitted the hob and the worktop were broken. He did not dispute that they had used incense in the Property which had caused smoke damage throughout. Whilst he disputed that the amount for decoration was excessive, he did not provide any evidence to substantiate his submission that the sum claimed was not reasonable. Accordingly, the Tribunal was satisfied that the

Respondents were liable in terms of Clause 25 of the tenancy agreement to pay for the damage to the Property. The Tribunal was satisfied on the basis of the documents lodged, together with parties' submissions that the order for payment in favour of the Applicant be granted.

### **Decision**

20. The Tribunal granted an order for payment of £2561.69

### **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 Evans

4 March 2023

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Legal Member

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Date