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 Tribunals (Scotland) Act 2014 ("the 2014 Act") and Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the 2017 Rules")

Chamber Ref: FTS/HPC/CV/19/4040

Re: Property at 14 Scott Street, Motherwell, ML1 1PN ("the Property")

Parties:

Mrs Maria Lawrie, 40 Leyland Road, Motherwell, ML7 3FX ("the Applicant")

Miss Michelle Ryan, 5 Grace Wynd, Hamilton, ML3 6QH ("the Respondent")

Tribunal Members:

Nicola Weir (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that no order for payment to the Applicant should be made against the Respondent.

Background

1. By application submitted on 23 December 2019, the Applicant sought a payment order in the sum of £1517 against the Respondent in respect of cleaning and repair costs to the Property incurred by the Applicant at the end of the tenancy. Supporting documentation was submitted with the application, including a copy of the Tenancy Agreement, AT5, photographs, invoices in respect of works at the Property and a breakdown of the figure claimed of £1517.

2. The application was accepted by the Tribunal and duly served on the Respondent who submitted written representations and other documents in response to the claim on 4 February 2020. The other documents submitted consisted of copies of a number of text messages between the Respondent

and Applicant and copies of guidance from various sources on the issue of 'fair wear and tear'. The Respondent's response was circulated to the Applicant who then submitted further representations on 19 February 2020, in answer to the response. Those further representations were circulated to the Respondent.

3. A Case Management Discussion ("CMD"), attended by both parties, took place on 24 February 2020. A detailed Note on the CMD prepared by the Legal Member who dealt with the CMD and a Direction, both dated 24 February 2020 were issued to parties after the CMD. The Tribunal Members had had regard to the terms of both documents. It had been conceded by the Applicant at the CMD that, as the Applicant had retained the tenancy deposit paid by the Respondent at the outset of the tenancy, that the deposit amount of £435 would stand to be deducted from any award made by the Tribunal. It had also been conceded by the Respondent that she was liable to pay a cleaning fee (albeit not of the amount claimed by the Applicant) and also that she was liable for the cost of replacement of a mirrored wardrobe door which had been damaged during the tenancy (although she wished to receive a further breakdown of the relevant invoice from the Applicant before agreeing on a figure). It had been established at the CMD that there was, however, a factual dispute concerning most elements of the claim which required to be determined at an evidential Hearing and this was fixed for 6 April 2020. The Direction issued following the CMD required both parties to lodge any supplementary documents on which they wished to rely, together with a list of witnesses, by 27 March 2020.

4. The Applicant responded to the Direction on 15 March 2020 to advise of the name of the one witness she was intending to have at the Hearing to give evidence and confirmed that she had no further documents she wished to lodge. There was no response from the Respondent.

5. The Hearing fixed for 6 April 2020 was postponed due to the Covid-19 pandemic and re-scheduled to take place on 24 August 2020 by way of telephone conference call. The Respondent made a postponement request on the basis that she was due to be away on holiday on that date, which was granted by the Tribunal. The Hearing was re-scheduled to take place on 5 October 2020 at 10am by telephone conference call and this was notified to parties on 7 September 2020.

6. On the evening of 4 October 2020, the Respondent emailed to the Tribunal a copy of an Invoice relating to cleaning she had had carried out at the Property on an earlier occasion and which she had agreed to lodge with the Tribunal during the discussions at the CMD. This documentation was circulated to Tribunal Members and the Applicant by email on the morning of 5 October 2020, in advance of the Hearing.

The Hearing

7. The Hearing took place by telephone conference call on 5 October 2020 and commenced just after 10am. Both parties were in attendance. The Applicant also had her daughter, Mrs Clare Scott, in attendance with her as a supporter.

Both parties gave evidence and answered questions from the Tribunal Members. The only witness was for the Applicant, Miss Stephanie Lawrie, daughter of the Applicant, who joined the telephone conference call at the appropriate time and gave her evidence. She also answered questions from the Tribunal Members. Neither of the parties wished to ask each other any questions and nor did either wish to ask the witness any questions.

8. After introductions and introductory remarks by the Legal Member, the Tribunal considered the preliminary issue as to the document submitted by the Respondent the previous evening which had been circulated on the morning of the Hearing. The Respondent was asked for the reason for the late lodging of this document and the Legal Member referred her to Rule 22 of the 2017 Rules which states that documents are to be submitted no less than 7 days before the Hearing. The Respondent indicated that she had simply forgotten to submit this document previously and did not really have any excuse. The Tribunal noted that, apart from the 2017 Rules, the Respondent had also not complied with the Direction concerning the lodging of documents issued following the CMD. In the circumstances, the Tribunal was not satisfied that the Respondent had a reasonable excuse in terms of Rule 22(2) of the 2017 Rules and, accordingly, refused to allow the late lodging of the document. It was explained to the Respondent that no account would be taken of the document.

9. The Applicant was asked to address her application and confirmed at the outset that she had conceded at the CMD that the deposit of £435 paid by the Respondent at the outset of the tenancy, having been retained by her, would stand to be deducted from any sum that the Tribunal may decide to award her. The Applicant made reference to the breakdown of the sum she was claiming from the Respondent of £1517, the photographs she had lodged showing the damage to the Property, the invoices she had lodged and the terms of the lease. She stated that she was not worried about wear and tear and that she was claiming for damage to the flat and cleaning costs. The Applicant said that she had not been able to see the damage and dirtiness in the flat until after the Respondent had left and returned the keys on 24 July 2019. The Applicant had been at the Property with her daughter Stephanie prior to that but they had just stood in the hall and chatted to the Respondent. It was the Respondent who had given notice that she was terminating the tenancy and their discussion had been about her having been very happy in the flat, when she would be moving out and the plans the Applicant had for selling the flat. The Applicant stated that the Respondent had told her that she would clean and hoover the flat before she left. In response to questions from the Legal Member, the Applicant confirmed that her relationship with the Respondent throughout the tenancy had been amicable. She and Stephanie were at the Property twice before the Respondent left but did not carry out any inspection on those occasions. She could not recall exactly the purpose of these visits, other than just to speak to the Respondent. They had just stood in the hall and did not see the rest of the flat. The Applicant stated that she told the Respondent she was keen to get the flat ready for sale and that she would be getting a decorator in to freshen up the Property. She confirmed that the Respondent had mentioned about getting back the tenancy deposit. The Applicant said that she did not specifically say anything about that in response to the Respondent as she knew this was

covered through the terms of the tenancy agreement. It was a few days after the keys were returned by the Respondent that the Applicant and her daughter went in to the Property and were able to inspect and see all the damage as the flat had been emptied by then. The Applicant stated that they had a difficulty opening the lounge windows when they were in and that she had required to contact the Respondent and ask about this. She stated that she did not, however, mention anything to the Respondent about the condition they had found the flat in. The Respondent was then on holiday and contacted the Applicant with her bank details on her return and asked for the return of the deposit. It was at this stage that the Applicant told the Respondent that she was not returning her deposit to her because she had had to pay out more than the deposit in respect of having repairs and cleaning carried out to the Property. The Applicant confirmed that she had not expressed any displeasure about the condition of the Property to the Respondent up until this point and that the works and cleaning had already been instructed/carried out.

10. The Applicant gave evidence on each of the heads of claim detailed in the breakdown she had submitted in support of her application, as follows:-

    (a) Cleaning of property £210 – the whole Property required to be deep-cleaned, including the oven which the Respondent had not cleaned at all.
    (b) Decoration to cover picture hooks £520 – the Respondent had had pictures everywhere which had left pin holes in the walls which the Applicant's painter had had to fill in in every room, except for one bedroom, before painting the flat. The Respondent had also left a sticker on one wall. The Applicant stated that, as the Respondent had been in the flat for 12 years, she had expected to have to freshen it up a bit to put it on the market but does not accept that the pin holes were wear and tear. She confirmed that the Respondent had carried out some decoration to the flat during the tenancy with her permission.
    (c) Supply and fit bathroom tile £100 – there was a single damaged floor tile in the bathroom that must have been damaged by the Respondent as it was not pre-existing as claimed by the Respondent. The Applicant confirmed that she had attended at the Property with her husband when the Respondent was viewing the flat at the outset and that there was no mention made by the Respondent of a cracked tile in the bathroom then. The Respondent did not report the cracked tile to her during the tenancy either.
    (d) Back bedroom carpet £69; Living room carpet £70; kitchen lino £50; fitting costs £111 – there were holes in the carpets which were damage, not just wear and tear and also a stain on the back bedroom carpet from hair dye spilled by the Respondent by her own admission. The area in the living room carpet looked as if a suite or other furniture had been dragged along. The lino in the kitchen was dirty and a section of it underneath/near the washing machine was faulty and looked as if it was lifting up/coming away. The Applicant did not know if this had been caused by water damage. The Respondent had not reported any problems with the lino to her during the tenancy. The Applicant confirmed that these carpets and the lino had been there for the duration of the Respondent's tenancy of 12 years and had been fitted around 2 years before that. The Applicant stated that her daughter, Stephanie, lived in the flat before the Respondent. Accordingly, the carpets

and lino had been in situ for at least 14 years. The Applicant confirmed that she had not charged the Respondent for replacing the carpet in another room at the end of the tenancy as it had not been damaged by her and that she had only charged the Respondent the relevant proportion of the whole carpet fitting fee.

(e) Mirror wardrobe doors £237; fitting fee £150 – one of the mirror wardrobe doors was broken and had to be replaced and, in addition, the mirror wardrobe doors in the other bedroom had been completely taken off and required to be re-fitted. The Applicant thinks the Respondent was having problems with the wardrobe doors because she had allowed so much dirt to gather in the runners but she had said that she would get these fitted before she left. The Respondent had not raised the issue of the wardrobe doors during the tenancy.

The Applicant stated that she had been in the Property approximately 4 or 5 times throughout the tenancy and had never had any concerns previously about the condition of the Property although she had not inspected it while the Respondent was living there. She also confirmed that the Respondent had reported various repairs issues to her over the years and that the Applicant generally arranged for her son/son-in-law to attend to these.

11. In response to questions from the Ordinary Member, the Applicant advised that she had not obtained any other quotes for the cleaning of the Property. She confirmed that she was charged for 12 hours of cleaning as it took two days and paid a £60 fee on top of that. She confirmed it was a two bedroom flat. When asked if she was surprised at the cost, she said that the oven cleaning was part of it and it had been filthy, the photos of this being self-explanatory. She confirmed that the Respondent had not been given the option of getting her own cleaner instead. As for the decoration costs, the Applicant confirmed that she obtained no other quotes but had been given an estimate first. Again, she had not given the Respondent the option of dealing with this herself. She said this was because the Respondent had put the keys through the door and was therefore not intending to do any works on the Property. The Applicant felt she was entitled to do this given the terms of the tenancy agreement. The Applicant advised that she had no photographic evidence of the Property at the outset of the tenancy and nor was there an Inventory prepared. She advised the flat was empty except the white goods and curtains. She does not have any receipts for the carpets or lino as they were bought 14 years ago. The Applicant stated that her husband had dealt with the flat until he died, when she took over. She confirmed that the Property was put on the market and is now sold. If the floor coverings had not been damaged by the Respondent, she would just have had them cleaned and freshened up. As regards the mirrored wardrobes, the Respondent had said she would get the doors re-fitted and the Applicant did not know why that had not happened.

12. The Applicant's witness, Miss Stephanie Lawrie then joined the tele-conference call and gave her evidence. She said that she had had really limited involvement in the situation but had been brought into this because the Respondent kept saying that Miss Lawrie had said certain things. She confirmed that she went to the Property with her mother, she thinks a couple of

times, as the Respondent was moving out to another property. She said they had discussions about this and the various arrangements for her leaving the flat. The majority of the discussions took place in the vestibule and hall of the flat. Miss Lawrie said that the Respondent was not very welcoming and kept them in the hall. They were only able to have a brief look. There are two bedroom doors off the hallway which were open and they could see that there were boxes everywhere. The Respondent had been the tenant for a while and her mother had explained to the Respondent that she had no desire to let out the flat again and that she intended to get it painted and freshened up for sale. Miss Lawrie said that the Respondent had mentioned to her mother about getting her deposit back but no full inspection had been carried out at that stage. She does not recall any discussion about the return of the deposit being dependent on that. Miss Lawrie said that she was in the flat twice with her mother after the keys were handed back. She said that the condition of the flat and damage caused was self-evident from the photographs. There was filth everywhere, the oven and under the kitchen appliances, a hole ripped in the carpet and a massive stain, the mirrored wardrobe doors were broken and off their frames, the kitchen floor was damaged, there were cracked tiles, pinholes in the walls and a sticker had been stuck on one wall on top of expensive wallpaper. The whole flat needed a professional intensive clean. The mirrored doors had to be replaced and re-fitted.The Respondent had said to them that she had had a cleaner in herself not long before this and had the carpets cleaned too but this beggars belief. When asked about her mother contacting the Respondent about how to open the windows on one of these visits to the flat, Miss Lawrie said that she was not privy to the discussions but her mother may not have raised the issue of the condition of the flat with the Respondent at that time because they had not fully looked at the flat at that point. She explained that this was their first visit to the flat after the Respondent had moved out but that they had just popped in quickly to open the windows and air the flat as they were on their way somewhere else. Miss Lawrie was asked about how long it had been since the flat was previously decorated and about the age of the carpets and lino. She stated that the last time they decorated the flat would have been before the Respondent moved in and the carpets and lino were the same. She confirmed that she herself lived in the flat before the Respondent for over two years and accepted that this meant that the carpets were more than 14 years old. However, she said they were good quality carpets and she herself has had carpets for that length of time and they are still in good condition. She did not accept that any of the damages were due to wear and tear and said that the Respondent had fully accepted that she had spilled hair dye on the carpet and broken the mirror wardrobe door.

13. The Respondent then gave evidence. She stated that when she first visited the Property to view it, Mrs Lawrie was not present. It was only Mr Lawrie who was there with the Respondent and her sister. This is when she raised with him the hairline crack in the bathroom floor tile. She also stated that they discussed the fact that there was some light staining on the living room carpet going towards the kitchen. Mr Lawrie told her that there had been a male tenant in the Property for 6 months beforehand, which the Applicant and her daughter had not mentioned. She said that, other than those issues, the condition of the flat was fine when she moved in and it had been recently painted. She wanted to make

the point, however, that the carpets were not new when she moved in and were not in perfect condition. The Respondent stated that, after she had given notice to the Applicant about terminating the tenancy on 30 July 2020, the Applicant and her daughter came to the flat twice, the purpose being to discuss arrangements and to have a look around to see what would be needing done before putting the flat up for sale. The Applicant said they would be getting a painter in to freshen it up. The Respondent said that this is why she ended up moving out 10 days earlier than she had to, to accommodate the Applicant and let the decorator get started. She said that relations were amicable and she was very comfortable with them being there. The Applicant had been in the flat several times during the tenancy when her son was doing work to the flat and they had had good chats. She said that their discussions on these two occasions had absolutely not just taken place in the hallway. They had gone around the flat and she, in fact, had pointed out things to them that were worn out and would need replaced if they were going to put the flat up for sale and feels that this is now being used against her. The Respondent stated that she pointed out the stain in the bedroom carpet from the hair dye that she had spilled and that she had suggested that the stain would probably come out with a carpet cleaner but that the carpets would definitely need replaced anyway. They discussed the problem with the wardrobe doors coming off their runners and not sitting properly. The Respondent had commented to the Applicant's daughter that the doors were "a nightmare" and said that the daughter agreed and said they always had been. The Respondent said that she subsequently took the wardrobe doors off all together as she could not get them to sit properly and thought that would be easier all round. She said that she asked the Applicant about picture hooks, etc in the walls and stated that the Applicant had that was fine, that it had been the Respondent's home for 12 years and that the walls would be getting decorated anyway. The Respondent asked if the Applicant wanted her to leave the curtain rails the Respondent had had fitted and the curtains and this was agreed. The Respondent confirmed that she had asked about return of her deposit during these discussions at the flat and it was agreed that she would give her bank details to the Applicant for this to be done at the end of the tenancy. The Respondent said that, as far as she was concerned, everything was "grand" and she was given no indication that there was anything wrong or that the Applicant wanted her to do anything to the flat, other than move her belongings out. She referred in that regard to the text messages exchanged between them after their two visits to the flat when final arrangements were made for her moving out and returning the keys. The Respondent said that, after she had moved out, a neighbour who was buying some of her furniture, had still to come and collect a few items from the flat. The Respondent had intended to carry out a final hoover round after that but stated that the Applicant had told her not to worry about that and just to put her keys through the door as she was keen to get her decorator in to start work. A few days after she had returned the keys, she was contacted by the Applicant, who was calling from inside the flat, for some advice about how to open the living room windows, which the Respondent gave her. The Applicant did not say anything about the condition of the flat or express any displeasure. The Respondent then went on holiday to Ireland, still thinking everything was absolutely fine. The first indication she had that this was not the case was when she returned from holiday and texted her bank details to the Applicant, as had

been agreed, and was told that the Applicant was not paying her the deposit back. The Applicant refused to discuss matters with her at all so the Respondent, on finding out that the Applicant had not lodged the deposit in a scheme, raised a deposit scheme action at the Tribunal. She felt that she had been given no warning or opportunity to discuss the issues, nor the option of doing things herself to the flat or getting alternative quotes. She does not think it is fair that the Applicant just decided unilaterally that she was not to get her deposit back. She still does not understand why the Applicant dealt with matters this way when she had had a trouble-free tenancy for 12 years. Then, out of the blue, just after the deposit scheme action was finalised in the Respondent's favour, this action was raised by the Applicant. That was the first notification she had had of how much the Applicant was looking to claim from her.

14. As regards the particular aspects of the claim:-

(a) Cleaning costs - the Respondent conceded, as she had at the CMD, that she was willing to pay towards the cleaning costs but not £210 or for 2 days worth of cleaning as she feels this was not required and is excessive. She said that she had arranged to have the whole flat cleaned in April 2019 as she had a broken arm and this only cost £78. She accepts that she did not clean under the washing machine or fridge, both of which were the Applicant's and were being left, as she thought the Applicant was going to "gut the place". She reiterated that she did not hoover before finally leaving as the Applicant told her not to bother with that. She accepted also that she had not cleaned the oven but that she had not thought it was that bad. When asked by the Ordinary Member about the evidence for the Applicant that the flat was very unclean and the photographs lodged by the Applicant in support of her claim, the Respondent stated that she did not feel that the photographs were a good representation of the flat as a whole and that photographs of the whole rooms would have been helpful. She felt that the Applicant and her witness were exaggerating and that the flat was lovely overall.

(b) Decoration fee to cover picture hooks – the Respondent does not accept this at all. The Applicant had made it clear right from the outset that she was going to get the flat decorated to put it on the market and the Respondent should not be liable for these costs. She stated that there had been two large pictures in the living room when she had moved in but accepted that she had put up a lot of pictures in the flat. She also accepted that she had put a sticker of the moon on one of the bedroom walls but that she did not really think anything of that. She was sure that if some hot water was put on it, it would just have lifted off. She was specifically told by the Applicant not to worry about the picture hooks/pinholes.

(c) Bathroom tile replacement – the Respondent does not accept liability for this as the crack was pre-existing when she took on the tenancy. It was a floor tile and it gradually worsened over the years, simply through wear and tear and being stood on. She had raised certain repairs issues with the Applicant over the years but this tile was nothing that she felt needed raising.

(d) Carpets and kitchen lino – although she admitted staining the bedroom carpet with hair dye, she does not accept that she had otherwise damaged

the carpets or kitchen floor covering. She said the carpets had been in place for at least 14 years and had already been in place for over two years when she moved in and had not been in perfect condition then. She referred to the discussion with Mr Lawrie at the outset regarding the living room carpet.The photographs show a worn patch on each of the carpets but this is just from normal wear and tear. In the bedroom, the patch is where an indentation was from the bed. She explained that when she had had the carpets cleaned on the last occasion, her carpet cleaner had said to her that the carpets were essentially "done", that small pieces of the carpet were lifting up with the machine and that that there was little point having the carpets cleaned again. The Respondent denied having caused any damage to the kitchen floor covering which she described as more like planks that fitted together than lino. She said they had started to slightly lift up in places but that this was just due to wear and tear. The Respondent stated that she had raised the condition of the kitchen floor covering with the Applicant 18 months to 2 years prior and had even offered to contribute to the costs of replacement then but the Applicant had stated that she did not want to spend money on the flat. The Respondent does not consider that she is liable for the costs of replacing or fitting either of the carpets nor the kitchen floor covering.

(e) Mirror wardrobe doors – the Respondent confirmed, as she had at the CMD, that she had been responsible for the crack in the mirror wardrobe door. She did think, however, that the cost of £237 for a new door was quite expensive and wanted to know that it was just the one door which had been replaced. On being referred to the relevant Invoice by the Ordinary Member, she conceded that this was the charge for one door but would still have preferred if a couple of quotes could have been obtained for this. She would have expected that conversation to have taken place with the Applicant before the Applicant went ahead. As to the fitting fee charged for re-hanging the mirror wardrobe doors in the spare bedroom, the Respondent feels that this is way over the top and that she should not be liable for the costs anyway. She referred to the wardrobes having been in the flat for the duration of her tenancy, so at least 12 years, and the problems she had experienced with them throughout, which she had discussed with the Applicant's daughter. She said that she had not raised this as an issue with the Applicant during the tenancy as it was not a major issue to her as this wardrobe was in the spare bedroom and was not used by her much. She said that the doors often came partly off the runners and that the wardrobe door frames were basically falling apart.

15. After a brief adjournment, the parties were invited to sum up. The Applicant stated that the Respondent had put the keys through the door on 24 July 2019, so as far as she was concerned, this was the condition the Respondent was leaving the Property in. The costs they are claiming are for damages caused by the Respondent, not wear and tear. She made reference to Clause 5 of the lease which she says supports her claim for the sums sought. The Applicant also wanted to make it clear that she did not ask the Respondent to leave the tenancy early. The Respondent stated that at no time did the Applicant say she would be responsible for any costs, even when the Respondent raised the issue of her getting her deposit back. She is not responsible for all of these costs

incurred by the Applicant. The Respondent was not told that the Applicant was instructing any works for which she was being held responsible and she was not given an opportunity to do anything or have any works arranged herself. She left the tenancy 10 days earlier than the termination date to accommodate the Applicant's decorator and when she raised with the Applicant about still having to do a last hoover round, the Applicant told her not to worry about it.

Findings in Fact

16. The Applicant was the surviving owner and landlord of the Property.

17. The Respondent was the tenant of the Property by virtue of a Short Assured Tenancy Agreement dated 17 September 2007 between the Applicant and her late husband and the Respondent.

18. A tenancy deposit of £435 was paid by the Respondent at the outset of the tenancy.

19. Relations were amicable between the parties throughout the tenancy which lasted almost 12 years.

20. The Respondent gave notice to the Applicant that she wished to terminate the tenancy and a termination date of 30 July 2019 was anticipated.

21. The parties subsequently agreed that the Respondent would vacate the Property earlier and she returned the keys a few days later, on 24 July 2019.

22. Prior to 24 July 2019, the Applicant and her daughter had visited the Respondent in the Property on two occasions.

23. Prior to 24 July 2019, the Applicant had stated her intention to have decoration works carried out to the Property in order to ready it for sale or re-let.

24. Prior to 24 July 2019, the parties had several discussions, both in person and by text message, during which the parties matters pertaining to the condition of the flat and agreed what the Applicant expected the Respondent to do prior to vacating.

25. Shortly after 24 July 2019, the Applicant visited the Property with her daughter again, by which time the Property was essentially empty. She contacted the Respondent from the Property regarding a difficulty opening windows. No mention was made of any concerns the Applicant had regarding the condition of the Property.

26. The Respondent contacted the Applicant with her bank details on 30 July 2019 with a view to her deposit of £435 being returned. The Applicant responded that the deposit was not being returned as she was having works carried out, the costs of which exceeded the deposit.

27. The Respondent was not given any prior warning before returning the keys, nor before the works were carried out, that the Applicant had any issue regarding the condition of the Property. Nor was the Respondent given any opportunity to carry out or have the works carried out herself, nor to obtain any alternative quotes.

28. The Applicant did not obtain more than one quote or estimate in respect of any of the works she instructed.

29. The Applicant instructed works to the Property and thereafter sought to recover the total sum of £1517 from the Respondent in this regard. The Respondent had no notification of the detail of the costs incurred by the Applicant until she received notification of this Tribunal application.

30. The Respondent has conceded certain aspects of the Applicant's claim but disputes the rest.

31. The Applicant had not put the deposit into a tenancy deposit scheme, thereby denying the Respondent access to the adjudication process provided by the schemes to resolve disputes regarding return of deposits.

32. The Respondent made a successful Tribunal application against the Applicant in terms of her failure to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011. The decision in that case was issued on 9 December 2019 and required the Applicant to pay a penalty to the Respondent.

33. The current application was submitted to the Tribunal on 23 December 2019.

34. The Applicant has retained the Respondent's deposit of £435. The Applicant has conceded that the sum of £435 would require to be deducted from any payment that the Tribunal assesses as being due to be paid by the Respondent to the Applicant in respect of this application.

Reasons for Decision

35. The Tribunal noted that Clause FIVE of the Tenancy Agreement deals with "Maintenance and Repair" and states:-

"The Tenant accepts the flat as being in good and tenantable condition and repair and shall be bound to keep and maintain the interior of the flat in such condition and repair throughout the period of the Short Assured Tenancy and to leave it at the termination thereof for any reason in the like good and tenantable condition and repair and in good decorative order…….The Tenant accepts the contents as being in good condition and repair and shall be bound to keep the said contents in good condition and repair (fair wear and tear excepted) and shall replace or repair or clean any item which may be lost, broken, stained or otherwise damaged."

36. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation, the written representations from both parties, the documents lodged by the Respondent in support of her written representations and the oral evidence given at the Hearing by both parties and the Applicant's witness.

37. On balance, the Tribunal found the evidence of the Respondent more credible than that of the Applicant and her witness as regards the two visits to the Property in advance of the Respondent vacating and returning her keys. So too as regards the discussions which had taken place then and subsequently between the parties. The Tribunal accepted the evidence of the Respondent that the Applicant and her daughter had gone around the Property with the Respondent on at least one of those occasions (as opposed to being kept in the hall by the Respondent) and had specifically discussed items, such as the picture hooks/wall pins, the condition of the carpets and kitchen floor covering and the problems with the mirror wardrobe doors repeatedly coming off their runners. The Tribunal had the impression that the Applicant and her daughter were downplaying these discussions, perhaps because they thought it would be harmful to the Applicant's case. It was not disputed by anyone that relations between the parties had been good throughout the lengthy tenancy; that these discussions between the parties had been amicable; that the Applicant had stated her intention to get in a decorator to ready the Property for sale; that the Respondent had asked about getting her deposit back; and that the Applicant had made no comment to the contrary. The Tribunal was of the view, given these discussions and the subsequent text messages between the parties that the Respondent was entitled to think that the Applicant had no issue concerning the condition of the flat and that there was nothing specifically that she required to attend to before vacating. The Tribunal accepted the Applicant's evidence that a thorough inspection of the Property was not carried out until after the keys were returned and the Property vacated, and that the extent of some issues may not have come to light until then. However, in those circumstances, the Tribunal would have expected the Applicant to raise these with the Respondent, give her an opportunity to rectify matters herself and/or obtain her own quotes. This is particularly so, given the Respondent's evidence (which was not disputed) that the parties had been in communication shortly after the Respondent had returned the keys and the Applicant had been in to the vacated Property. The Tribunal does not consider the stance adopted by the Applicant to be a reasonable one, namely to try and hold the Respondent to the strict terms of clause FIVE of the Tenancy Agreement, where the Respondent had been given the impression that all was well; that agreement had been reached between the parties regarding all aspects of termination; and that the Respondent was actively encouraged to vacate early to accommodate the Applicant. It was only when the Respondent sought return of her deposit that she was made aware that there was any issue and by that time, the Applicant had already proceeded to have the works carried out/instructed. In all of these circumstances, the Tribunal was not satisfied that the Respondent should be held liable to the Applicant in the sum of £1517 sought by her.

38. The Tribunal then assessed each individual aspect of the Applicant's claim in turn, with reference to the Applicant's breakdown of costs. As regards the

cleaning costs of £210, the Tribunal considered that it was appropriate for the Respondent to pay some cleaning costs, as was conceded by the Respondent. With reference to the photographs lodged, it was apparent that the oven and kitchen floor would have required an intensive clean. However, the Tribunal was not satisfied from the photographs or other evidence on behalf of the Applicant that the whole Property was dirty or would have required a deep clean. The Tribunal agreed with the Respondent in this respect that photographs showing whole rooms, as well as close-ups of the dirty areas would have been helpful. The Tribunal was of the view that the Respondent should have been given the option of doing the cleaning herself or obtaining an alternative quote and that the Applicant should have obtained more than one quote. In the circumstances, the Tribunal considered £210 to be excessive and determined that the Applicant should be awarded 50% of these costs, namely £105.

39. In respect of the decoration costs of £520, the Tribunal noted that, although the Applicant states in her breakdown “decoration to cover picture hooks”, no detail of works carried out was contained in the invoice produced in support. The Tribunal was satisfied from the evidence of both parties and the witness that the Applicant had stated an intention to have the flat decorated anyway, in order to prepare it for sale. Given the length of the tenancy, the Tribunal was of the view that the decoration was required to address fair wear and tear, for which the Respondent is not liable in terms of the Tenancy Agreement. However, the Tribunal accepted from the evidence heard that there were numerous small holes in the walls left when the picture hooks and pins were removed which may have required filling and also a sticker on one wall and, accordingly determined that the Applicant should be awarded a nominal sum of £50 towards the decoration costs.

40. In respect of the single cracked tile in the bathroom, the Tribunal preferred the evidence of the Respondent that there was a pre-existing hairline crack in this tile when she took on the tenancy and that this had worsened due to fair wear and tear over the 12 year tenancy, as opposed to having been ‘damaged’ by the Respondent. The Respondent appeared to have a good recollection of the discussions she had had with Mr Lawrie in this regard and the Tribunal found her evidence credible. The Tribunal was persuaded that the Applicant herself had not been party to those particular discussions, with regard to the fact that the Applicant had herself stated in evidence that it was Mr Lawrie who had dealt with the flat at that time. The Tribunal accordingly determined that no award should be made in respect of this item.

41. As regards the replacement of two carpets and the kitchen floor covering, the Tribunal determined that no award should be made. Having regard to the photographs and the evidence heard and, particularly, the fact that it was admitted by the Applicant that these had all been in place for over 14 years, the Tribunal was satisfied that, again, these items required to be replaced anyway due to fair wear and tear. This was further supported by the Respondent’s evidence that she had discussed with the Applicant the need to have the kitchen floor covering replaced a year or two previously. The bare patches in the carpets shown in the photographs appeared to the Tribunal to be worn,

threadbare patches, as opposed to rips as had been stated by the Applicant's witness. The Tribunal was of the view that the Respondent had been quite forthright in pointing out to the Applicant the stain that she had caused by spilling hair dye on one of the bedroom carpets and, in other circumstances, the Respondent may therefore have been found liable for having damaged this carpet. However, the Tribunal noted from the Invoice in this regard that the Applicant appeared to have replaced four (as opposed to two) carpets and the kitchen floor covering. When asked about this the Applicant confirmed that she had only sought to charge the Respondent for the two carpets and the kitchen floor covering which she had damaged and the relevant proportion of the fitting fee. However, the fact that the Applicant had chosen to replace two undamaged carpets as well was, to the Tribunal, an indication that all carpets had sustained fair wear and tear and would have been replaced anyway, regardless of any additional damage.

42. In respect of the £237 for replacing the cracked mirror wardrobe door and the separate fitting fee of £150, the Respondent conceded that, as she had damaged the door, she was liable to pay for the replacement, although she felt the sum of £237 was excessive. The Tribunal considered that it would have been preferable had the Respondent been given the opportunity to obtain an alternative quote or had the Applicant obtained more than one quote. The Tribunal considered the Respondent's evidence about the difficulties she had experienced with the sliding doors in the other bedroom repeatedly coming off their runners and the discussions she had had with the Applicant's daughter concerning this to be credible and, again, that she had been quite forthright in admitting that she had decided to take the doors off altogether when she was unable to get them properly back in place. The Tribunal considered that the fair wear and tear argument also applied to these wardrobe doors, given the length of the tenancy of 12 years, as did the comments above about the desirability of obtaining alternative quotes for the fitting. Accordingly, the Tribunal determined that an award of £237 only would be appropriate here.

43. The Tribunal accordingly determined that the total sum of £392 is due to the Applicant but as that is less than the amount of the deposit retained by her of £435, no payment order is to be made against the Respondent.

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.

N Weir

Legal Member/Chair

11 October 2020
Date