



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

**Chamber Ref: FTS/HPC/CV/20/2540**

**Re: Property at 28 Nith Place, Kilmarnock, KA1 3NJ (“the Property”)**

**Parties:**

**Mr Michael McKenna-Cansfield, Mrs Gillian McKenna-Cansfield, 185 Hurlford Road, Kilmarnock, KA1 3QB (“the Applicant”)**

**Mr Paul Anderson, 7 Wilson Ave, Kilmarnock, KA3 7AP (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 (seeking an order for repayment of a deposit) under the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”).
2. This application contained,
  - a. Deposit receipt;
  - b. Copies of text message history between the parties; and
  - c. Tenancy Agreement.

3. This application had been continued from a hearing on 18 January 2021, which had been conjoined with two other related applications. The application was continued to allow the respondent to have before him a copy of the tenancy agreement between the parties. Reference is made to the Hearing Note prepared.
4. After that hearing the tribunal issued a Direction to regulate further procedure in relation to today's hearing. Reference is made to that Direction. Parties were asked to submit further relevant information by 5 February 2021, the parties were to submit the following information:-

*The Applicant/Respondent is required to provide:*

- *A copy of the tenancy agreement for the property*
- *Any photographic evidence showing the condition of the property at the commencement of the tenancy and the end of the tenancy.*

*The Respondent is required to provide:*

- *A written note of his reasons for withholding the deposit, listing each item he considers entitles him to withhold the deposit.*
- *He should also set out the cost of each item which he wishes to deduct from the deposit.*
- *He should provide receipts for any work done to the property relevant to the withholding of the deposit.*
- *Any photographic evidence showing the condition of the property at the commencement of the tenancy and the end of the tenancy.*

5. The only further information which was submitted was by the respondent on 26 February 2021. He submitted two invoices one from Foodex for internal cleaning for £150; and the second from Alan Bone for external works for £250.

6. The respondent advised that he had only submitted the two invoices in support of his case, he had not submitted any further information. The tribunal asked him if he had been aware of the direction, he indicated that he had not received it. The clerk advised that it had been emailed to the respondent on 21 January. The applicant confirmed that she had received it. The respondent indicated that he had not dealt with the matter as he had been busy running his business; further he was not computer literate; and he thought he had until the day before the hearing to lodge any documents. The tribunal considered on balance that he had had notice of direction; we took into account that he did understand that he had to lodge documents prior to the hearing; the last hearing had been continued as he had attended it without all documents including, the lease agreement, and it appeared that he took a lax approach to dealing with these matters.
7. The applicant advised that she did not object to the late lodging of the documents and she was happy to proceed today. Tribunal members agreed to allow the two invoices to be received albeit late and to continue with today's hearing.

#### The Hearing

8. The application had been brought to the tribunal as the applicant alleged that she had paid a deposit of £1000.00 to the respondent for the property when she entered into the tenancy agreement; and the respondent had refused to return the deposit to her.
9. Parties agreed that there had been tenancy agreement between the parties for the property 28 Nith Place, Kilmarnock. They agreed that the applicant had paid a deposit of £1000. They both agreed that the deposit had not been returned to the applicant at the end of the tenancy.
10. The respondent was requested to advise why he had not repaid the deposit at the end of the tenancy. He advised that he had submitted the two invoices to support his claim i.e., internal cleaning and external cleaning and garden work;

the applicant owed him rent for leaving the property later than agreed; he had done other work to the property after the applicant had left including, painting the property; and he had had to expend time dealing with the applicant, including attending today's hearing.

11. The respondent submitted he should have been given the property back as he had handed it to the applicant, but this had not been the case. He advised that the invoices submitted were for cleaning the cooker, kitchen and the rest of the house totalling £150. The second invoice was for external work, cleaning gutters; weeding; cleaning patio; cleaning soffits and fascias; and removing rubbish from the garage and taking to the tip totalling £250. He advised that he had paid both of these invoices totalling £400.
12. Tribunal members asked him where in the tenancy agreement he was entitled to recover these sums. He advised that it was Clause 2.4 that the tenant had to yield up the property and all and any contents belonging to the landlord at the end of the tenancy in the same clean state and condition they were at the beginning of the tenancy.
13. He advised that in relation to the outstanding £600, there had been a breakdown in communication and the parties had been getting nowhere agreeing what should be deducted from the deposit; he indicated that he was willing to pay back that sum or similar figure if the Tribunal so decided. He advised that he had had to put in a lot of time and effort, painting and dealing with another person's stuff. He suggested that he was entitled to retain a sum around £500.
14. The applicant advised that this matter has been going on for 6 months. She said she was ashamed and embarrassed when the respondent had said in front of his family that she had left the property in a disgusting state. She advised that disputes over deposits are meant to be dealt with fairly and quickly and that was why deposits were meant to be put into approved schemes. This had not been done in this case. She advised that not having her deposit returned to her had caused her financial hardship.

15. She advised that that the respondent had not been at the property when they had taken entry and that keys had been left for her to secure entry.
16. She advised that they had never used the garage and anything in it was not their property. She disputed that she had any liability for clearing anything from it. She advised that there was a pool table in it, and it was there when she took entry. The respondent had asked her to remove it, she advised that she did not do so as it would have cost her money to remove it and it was not hers. She also advised that the garage window had been smashed in a storm, allowing in the elements, and the landlord had not attended to it.
17. She considered that the gutters, soffits and fascias were not a tenant's responsibility and she did not consider that she should pay the cost of this.
18. She submitted that she did not consider that she should have to pay for the cost of cleaning the patio and weeding, as she felt she had done her best to keep the patio area in reasonable condition and had submitted photos of it to evidence this. She submitted that the external property condition was not bad, and she did not consider that these costs were fair and reasonable or due by her.
19. In terms of the cleaning of the property she was very upset by his allegations about the condition of the property, she did not agree with his comments, however, to get the matters resolved she was prepared to pay for the cleaning invoice submitted for £150.
20. She advised that when she had taken entry of the property there had been a lot of dog hair in the property; and toys behind radiators. She had to clean the place up and she had just got on with it, as she had done in every other rented property she had occupied. She had not raised any issue with the landlord about the property condition.

21. She noted however that there was no evidence submitted by the respondent about any of these matters, the direction had requested that the respondent submit a note of the matters and evidence to support them including, photographic evidence to be submitted by the respondent and he had not lodged any evidence to support him retaining the deposit. Had he done so she would have considered what he had to say, as it was, she had no idea what he thought he was entitled to and why.
22. She accepted that she may owe 4 days rent and she was prepared to pay this from her deposit.
23. She advised that where she was to blame for matters, she would pay for them. However, in this case she disputed the matters other than being prepared to accept the cleaning invoice and the rent. She was content for the Tribunal to decide on the matter.

#### Findings in Fact

24. The Tribunal made the following findings in fact:-
- a. That a tenancy had commenced on 27 September 2019.
  - b. The Respondent was the landlord, and the Applicant was the tenant.
  - c. That the Applicant had paid the Respondent a tenancy deposit on 4 September 2019 of £1000.
  - d. That the tenancy had ended on 4 October 2020.
  - e. The tenancy deposit had not been repaid to the Applicant.
  - f. The parties were in dispute about whether the Respondent was entitled to retain the deposit due to the condition of the property or any other matter at the end of the tenancy.

- g. There was an invoice for internal cleaning for £150 for the property.
- h. There was an invoice for cleaning gutters; soffits and fascias; patio; weeding; and removing rubbish from the garage for £250 for the property.
- i. Clause 2.3 of the tenancy agreement obliges the tenant to keep the property in a good and clean and tenantable state; and that the tenant accepts the property in good tenantable order.
- j. Clause 2.4 provides that tenant will yield the property and all and any contents belonging to the landlord at the end of the term in the same clean state and condition they were in at the beginning of the term.
- k. Clause 3.3 provides that the landlord will keep in repair the structure and exterior of the property (including drains, gutters and external pipes).
- l. Clause 5 provides that the deposit had been paid by the tenant and is held by the landlord to secure compliance with the tenant's obligations under this agreement.

#### Reasons for Decision

25. This application involves the non-return of a tenancy deposit. There was no dispute that there had existed a tenancy between the parties; that a deposit had been paid; and that the deposit had not been returned to the applicant. What therefore required to be determined was whether the respondent was entitled to retain any of the tenancy deposit having regard to the terms of the tenancy agreement; and whether there existed matters which allowed the deposit to be retained.

26. The tribunal would make the point that there appeared to be a lack of notice and detail provided by the respondent in relation to the issues he considered

allowed him to retain the deposit; and further he submitted very limited evidence to support any of his position. We considered that he had sufficient time to submit information and evidence to support his position and he had not done so. We also considered that the direction provided him with clear notice of the type of information required to support his position.

27. In considering the matter the tribunal had regard to the text exchanges between the parties at the end of the tenancy and the invoices submitted. There was no photographic evidence to show the condition of the property, while the respondent indicated he may have photographs of the property condition he had not submitted any. He had also not provided any written detail of the matters he was complaining about.

28. During the hearing the respondent suggested that he was only seeking to retain a sum in the region of £500. £400 of his claim was supported by the invoices he submitted. Additional money claimed appeared to relate to internal painting and his time. There was no evidence of any internal works other than the cleaning invoice. The respondent did not provide any clear detail of what "his time" consisted of.

29. The applicant advised that she was prepared to accept a deduction of £150 in relation to the cleaning invoice. She would also accept 4 days rent being deducted, which the tribunal estimated at £67. She disputed all other claims.

30. The tribunal preferred the evidence of the applicant in determining this matter. She advised that none of the items in the garage were hers, and therefore we do not see why she would be required to pay for the removal of those items. The respondent did not challenge her assertion that this was not her property. We preferred her evidence that the patio and weeding were in a reasonable state when she left the property. In terms of the soffits, fascias and gutters, we do not consider that the tenant was responsible for the cleaning and maintenance of those items having regard to the terms of clause 3.3. We had no further supporting evidence from the respondent to support this head of claim. We therefore make no award for the invoice for the external works



31. Having regard to the issue of internal painting, we were presented with no notice of what rooms this was carried out to; what the condition of the property was at commencement and/or at the end of the tenancy; and no invoices to show that any work had in fact been carried out. We consider that there was no evidence to support this unspecified claim. Therefore, we make no award for any painting works.

32. We were not clear what the basis was for a claim of the respondent's time and without adequate detail of what this meant and why it should be allowed under the tenancy, we were not in a position to make any award under this head of claim.

### Decision

33. The tribunal grant an order in favour of the Applicant for the Sum of SEVEN HUNDRED AND EIGHTY THREE POUNDS (£783.00) STERLING.

### **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.**

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**Legal Member: Melanie Barbour**

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**Date: 1<sup>st</sup> March 2021**