



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

Chamber Ref: FTS/HPC/CV/21/1874

Re: Property at 7 Montgomerie Road, Saltcoats, Ayrshire, KA21 5DJ (“the Property”)

Parties:

Mr Kevin McIntosh, Mrs Rosetta McIntosh, 4A Montgomerie Road, Saltcoats, Ayrshire, KA21 5DJ (“the Applicant”)

Mrs Elizabeth Connelly, 11 Glen Crescent, Stevenston, KA20 3EE (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member)

Mrs F Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicants in the sum of £9,077.25.

Background

1. This is an application received on 5th August 2021. The application is made in terms of Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”). The Applicant was seeking an order for payment against two Respondents in the sum of £15,508.14 in respect of rent arrears, and damage to contents and property arising from a tenancy agreement between the parties that commenced on 12th December 2015, at a rent of £600 per month. A copy of the short-assured tenancy agreement was lodged, together with various invoices, receipts and quotations, and a rent statement.
2. A Case Management Discussion (“CMD”) took place on 29th September 2021. The Respondent indicated that she was defending the case and it was set

down for a hearing. A Direction was issued ordering parties to provide evidence and witness lists.

3. On or around 9th November and 13th December 2021 hearings set down for 15th November 2021 and 11th January 2022 respectively were postponed at the request of the Applicant's representative.
4. By email dated 20th January 2022, the Applicant's representative lodged a witness list.
5. By email dated 17th February 2022, the Applicant's representative lodged an inventory of productions comprising receipts and estimates, rent statement and photographs.
6. On 28th February 2022, parties were informed that the Tribunal had decided to convert a forthcoming hearing to a Case Management Discussion ("CMD") due to case management issues.
7. A CMD took place on 2nd March 2022 by teleconference call. Following discussion, the Applicants decided not to proceed with the application against the Second Respondent.
8. The Tribunal agreed to make an order removing the Second Respondent from the application.
9. Parties were notified on 14th April 2022 of a hearing set down for 5th May 2022.

The Hearing

10. A hearing took place by teleconference call on 5th May 2022. The Respondent was not present. The Applicants were present and represented by Mr Peter Walsh, Solicitor.
11. The Tribunal considered the terms of Rule 29 of The First-tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules") and considered that the Respondent had been notified of the hearing. The Tribunal decided to proceed with the application upon the representations of the parties present and all the material before it.
12. The Tribunal heard representations from the Applicant, Mr Kevin McIntosh in the following matters:

(i) Breach of contract

It was Mr McIntosh's position that the Respondent had breached paragraphs 2.3, 2.8, 2.9, 4.2.2, 4.2.3 and 5.6 of the tenancy agreement. Significant damage was caused to the Property. The garden was full of rubbish and furniture. The carpets smelled of dog urine, despite the Applicants having noted during an inspection that the Respondent had

purchased a carpet cleaner, which did not appear to have ever been used, and there was paint on the carpets which had been caused by door painting. The wooden kitchen worktops were damaged beyond repair and the whole kitchen required to be renewed. The lead was removed from the Charles Rennie Mackintosh bathroom mirror, the walk-in shower which had been installed to meet the needs of the tenant's disabled child was removed, and the bathroom sinks and other fittings were wrecked and had to be replaced. Vertical blinds were removed although fittings were left in place, and all the tenant's furniture was left in the house at the end of the tenancy. The intruder alarm system was destroyed by the tenant on leaving the property.

(ii) Rent arrears – £3276.96

Mr McIntosh referred to the rent statement provided, and said the rent was paid partially through benefits paid to the Respondent's mother, who was a tenant of the Property when the tenancy commenced, and who then moved to another property. This was believed to be after the first 7 months of the tenancy, though the Respondent's mother frequently stayed at the property and he understood her to be assisting with her grandchild. The Applicants understood all rent payments from the Respondent were funded via benefits but these payments were made direct from the Respondent to the landlord bank account. Rent payments from the Respondent ceased in March 2020 when arrears began to accumulate. From 26th August to 11th November 2020, following a request made by the Applicants, Housing Benefit of £290.76 per month for Mrs McArthur was paid directly to the Applicants by the local authority. At the end of the tenancy, the tenancy deposit of £600 was returned to the Applicants. The Respondent had contacted the tenancy deposit scheme to request return of the deposit, but had not responded to the scheme in the time permitted for adjudication. The outstanding rent is £3276.96.

(iii) Blinds – £500

Mr McIntosh said the blinds in the Property had to be replaced at a final cost of £500, which was £80 less than the sum initially sought, which sum was reflected in the estimate provided as production 2.B and dated 1st February 2021.

There was a letter from Mobile Blinds dated 26th October 2021 stating that the contractor installs vertical blinds in all the rental properties of the Applicants and that the properties are in pristine condition before blinds are installed as one of the last jobs before rental.

(iv) Carpet replacement – £538 & Carpet fitting – £365.50

Mr McIntosh said the carpets had to be replaced at a cost of £538, as shown in production 2.C which comprised an invoice and a receipt for

payment, both dated 16th April 2021. Production 2.D showed a quotation for £365.50 for carpet fitting, and Mr McIntosh confirmed he paid that sum, referring to a receipt lodged and dated 22nd April 2021.

(v) Replacement Alarm System – £400

Mr McIntosh said he paid the sum of £400 to have the alarm system replaced as reflected in an undated receipt for that sum. The estimate and the sum originally sought was £550, as indicated in production 2E, dated 28th January 2021.

(vi) Redecoration of the Property – £1400

Mr McIntosh said he carried out the redecoration himself, as he is a retired painter and decorator. Production 2F set out the work required, at an estimated cost of £1400 including materials. He said he had been quoted over £2000 by a painter and decorator, so he decided to do the work himself. Mr Walsh noted that Mr McIntosh did not produce any estimate of the extent and cost of his time, nor vouchings for any of the materials and Mr Walsh considered this was a matter on which the Applicants would accept the determination of the Tribunal.

(vii) Refit bathroom, doors and install kitchen – £4845

Production 2G was a quote from MBE Plumbing in the sum of £4845 for refitting a new bathroom, fitting doors and wardrobe doors, supplying a skip for the bathroom work and installing a new kitchen, the materials being purchased separately from Howdens. Mr McIntosh said although the document stated it was a quote, it was an invoice and that is the sum he paid.

(viii) Sheriff Officer fee for eviction – £119.36

Production 2H was an invoice from Sheriff Officers dated 25th November 2020 for effecting service of a charge for removing on 17th November 2021.

(ix) Replacement of kitchen – £3833.32

Production I was an estimate from Howdens dated 19th December 2020 for a replacement kitchen. Mr McIntosh said this was ordered by the plumber and paid to him along with the costs shown at (vi) above, as reflected in an undated receipt lodged, which actually showed a sum of £8013.32 rather than the £8678.32 that the Applicants suggested they had paid. They noted the discrepancy and said this had been a miscalculation on their part.

13. Reference was made to photographs lodged by the Applicants. There were three photographs showing the Property before the tenancy commenced.

Further photographs were lodged but not discussed due to the interruption mentioned in the following paragraph.

14. After almost an hour of representations had been heard, the Tribunal was informed that the Respondent had telephoned at 10.37am to say she was unable to participate as her son had been taken into intensive care the previous day.
15. The Tribunal adjourned to consider the new information provided. On reconvening, the Tribunal heard from Mr Walsh, who submitted that the Applicants were disappointed at this turn of events and were keen to continue with the hearing, albeit they understood this may not be possible.
16. The Tribunal adjourned again to consider matters. The Tribunal noted that the Respondent had not indicated that she was seeking a postponement or adjournment, and no medical evidence was provided by the Respondent to evidence her position. However, the Tribunal felt it would be appropriate to adjourn to allow the Respondent to be present at the hearing. The hearing was adjourned.
17. The Tribunal issued a Note of the Hearing to parties.
18. The Tribunal issued a Direction dated 5th May 2022 to the Respondent in the following terms:

The Respondent is required to provide:

 1. Evidence to support the claim that her son was admitted to Intensive Care on 4th May 2022.

The said documentation should be lodged with the Chamber no later than close of business on 31st May 2022.
19. By emails dated 14th May and 2nd and 10th June 2022, the Respondent gave details relating to her son's hospital admission.
20. A medical letter was lodged by the Respondent dated 2nd June 2022 stating that the Respondent's son had been in hospital from 27th April to 9th May 2022 and that the Respondent was resident with him while he was an inpatient.

The Hearing

21. A hearing took place by telephone conference on 21st June 2022. The Applicants were present and represented by Mr Walsh, Solicitor. The Respondent was present.

Preliminary Issues

22. The Tribunal considered a preliminary issue in relation to a production lodged by the Respondent the previous day, comprising a hand-written letter from Mr Stephen Connelly, the Respondent's husband. The Respondent said her husband could not be present. Responding to questions from the Tribunal as to why the document had not been lodged sooner, the Respondent said this was due to her son's health, lack of sleep and a poor memory. She had put matters on the back burner.
23. Mr Walsh objected to the late lodging of the statement, saying that the Respondents had months to prepare. Even if the statement was submitted, there was no witness to speak to it. The Respondent had not lodged a witness list.
24. The Tribunal decided not to accept the letter due to the late lodging. The Tribunal took the view the Respondent had ample time in which to lodge productions.

Evidence of Mr McIntosh

25. Mr McIntosh was referred to the photographs starting on page 47 of the Respondent's Inventory of Productions. The first three photographs were taken before the tenancy commenced. Mr McIntosh said the following photographs, from page 48 to 70, were taken the day after the Respondent was evicted from the Property. The blinds were black. The sockets in the kitchen were full of grease. The natural oak worktop was broken and water-damaged. The unit doors were off their hinges. The units were not repairable. The oven had to be discarded. There was rubbish in the kitchen.
26. There was a lock attached to each door in the house. Some doors had two locks, and Mr McIntosh thought they were to keep a child in the room. There were holes in doors where locks had been removed. The doors could not be repaired, and had to be replaced. Eight new doors were installed
27. The carpets were stained, and could not be cleaned. Some of them were covered in white powder. When they were removed, the stains had gone through to the floorboards, and they had to be bleached and painted. The carpets had all been new at the start of the tenancy.
28. The alarm system in the cupboard had been damaged by the Respondent. There was litter in the cupboards. There were stains on the walls. The double sink in the bathroom looked as if it had been hit by a hammer. The shower screen had been pulled off the ceiling and the shower had been removed. Lead strips had been removed from a Rennie McIntosh mirror. The doors of the vanity units had been removed. There were dirty nappies left in the bathroom, and on the bedroom floor.

29. There was rubbish left behind the sofa, in the hallway, the garage, and the garden. A mobility scooter, broken swings and chairs were discarded in the garden. The cupboards in the garage were broken and full of bottles and cans of cider. The back gate had been ripped off.
30. All the Respondent's furniture was left in the Property. The furniture was disposed of in a skip. It was Mr McIntosh's position that all the damage to the Property had had been caused by the Respondent.
31. Mr McIntosh said a new kitchen and bathroom were installed, as demonstrated in the photographs from page 71 onwards. Mr McIntosh did the work in the kitchen himself. The hallway was decorated. New carpets were laid.
32. Mr McIntosh said the wet bathroom was funded by the local authority, after receipt of a grant. The grant did not have to be repaid when the Respondent left. The local authority inspected and said they would write a report to ensure the Respondent did not get another grant.
33. Mr McIntosh said the worktop was all one piece. It was soft in places as if it had been wet for a long time. The unit below the cooker was cheaper to rip out than repair. Responding to questions from the Tribunal, Mr McIntosh said he did not get an estimate for repairing the kitchen. He said there was no point and that it had not entered his head to do so. He wanted to keep the Property to a good standard.

Cross-examination of Mr McIntosh

34. The Respondent put to Mr McIntosh that the property was not in an immaculate state when she moved in. There was paint on the living room carpet and the kitchen was not in a good state. The butcher's block-type worktop was there from the time of the previous tenant and the kitchen was not brand new. The cupboard doors were always breaking, and Mr McIntosh once came in to repair them. Mr McIntosh said he always made sure the Property was in good condition for a new tenant. The kitchen worktop was brand new. He had offered to fix the single cutlery drawer but the Respondent had said her husband would fix it.
35. The Respondent stated that the last tenant had to be evicted. Mr McIntosh denied this.
36. The Respondent put to Mr McIntosh that the original bathroom had been installed about 30 years earlier. No new panelling had to be installed after the Respondent left. The floor in the photographs looked the same. Mr McIntosh said the original bathroom had been fitted 8 or 9 years earlier. New panelling was installed, although he had not claimed for it. New grab rails were installed, along with a new shower and a bigger toilet pan.
37. The Respondent put to Mr McIntosh that the alarm system was subject to an annual contract for service and maintenance at a cost of £100 per year. He was

asked if the alarm kept going off, whether he could prove that the Respondent had damaged it, and whether he had damaged it himself after the Respondent left. Mr McIntosh denied that there was a maintenance contract for the alarm, and said he paid £70 or £80 when maintenance was required. He denied he had been told the alarm kept going off and that he kept visiting the property to deal with it, and said he had not damaged it.

38. The Respondent said she did not want to put any further questions to the witness as it was too upsetting for her and that she considered what he said was all lies. The Tribunal offered a short adjournment to allow the Respondent to consider matters and proceed. The Respondent said she did not want an adjournment.

Re-examination of Mr McIntosh

39. Mr McIntosh said he was unable to confirm that the toilet pan had been replaced, but the toilet seat had been changed.

Evidence of Mrs McIntosh

40. Mrs McIntosh said she had been a landlord for 19 years. She confirmed that the Property had been let to the Respondent, her husband, her mother and her son in December 2015. It was her position that the Respondent breached clauses 2.3, 2.8, 2.9, 4.2.2 and 5.6 of the tenancy agreement. The Respondent did not take reasonable care of the Property. She did not ventilate the Property. The curtains and blinds were always closed. The garden was not kept tidy. The bins were used, but there was rubbish discarded in the garden. Mrs McIntosh thought there had been one inspection of the Property.

41. Mrs McIntosh said the Respondent did not repair damage to the Property. She removed fixtures and fittings and did not clean or clear the Property at the end of the tenancy. Mrs McIntosh said the Property was in a good condition before it was let to the Respondent. Some rent was received through the local authority and some from the Respondent, as set out on page 34 of the productions.

42. Mrs McIntosh confirmed that the invoices/estimates for blinds (p36), carpets (p37), flooring (p37) and the alarm repair (p38) had been paid by the Applicants. Although the alarm repair invoice stated £550, the cost was £400. Page 39 outlined decorating work to the value of £1400 carried out by Mr McIntosh, who was a retired painter and decorator. That sum had not been paid by the Applicants. Mrs McIntosh said they would be willing to let that amount go, although they had paid for materials. Page 40 was an estimate for plumbing work, but the sum stated had been paid. The Sheriff Officer's fee (p41) had been paid. The cost of the kitchen (p42) had been paid. There was an error in the calculation on the handwritten invoice (p44) which stated that the cost was £8013.32. The actual cost, when receipts were added up, was £8678.32.

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43. Responding to questions from the Tribunal as to why the handwritten receipts on page 44 were all in the same writing, Mrs McIntosh said she wrote the receipts and the contractors signed them. It was a way of keeping records of expenditure. MBE had not signed their receipt.

44. Mrs McIntosh confirmed that the photographs from page 48 to 70 were taken after the tenancy ended. She was present when they were taken by Mr McIntosh and she confirmed the condition of the Property, inside and out, was as shown in the photographs. She said the alarm had previously been intact with a cover, but after the tenancy ended, it was found as shown in the photograph with the wires broken and hanging out. Mrs McIntosh confirmed no one else had access to the Property after the tenancy ended. The work to the Property was instructed by the Applicants, and the final photographs were taken when the work was complete.

Cross-examination of Mrs McIntosh

45. Asked whether she had bank statements to show that the sums claimed had been paid, Mrs McIntosh said all sums had been paid in cash. Mrs McIntosh reiterated why the receipts were handwritten. The Respondent asked whether Mrs McIntosh had inspected the Property and she said she had done so a couple of times.

46. The Respondent then decided not to cross-examine the witness any further, stating that it was too upsetting. The Tribunal urged the Respondent to continue, explaining the limits and benefits of cross-examination. The Respondent chose not to continue.

Helen Forbes

Evidence of Ms Grace McGill

47. Ms Grace Margaret McGill gave evidence. She is a solicitor. She knew of the Respondent, as the Respondent had rented Ms McGill's property in Saltcoats from 28th October 2020 to April 2021. The Respondent had obtained the tenancy by deception using a false name and false references. The witness said her letting agent had served notice on the Respondent to end the tenancy.

48. The witness said she got a call from several concerned friends in or around December 2020. Her friends had heard that the Respondent had been responsible for destruction in a previous property. The witness visited her property in December 2020 and found the Respondent and two men trying to put a caravan in the garden. She stopped them from doing this as it was too big for the monobloc drive and would have broken the gates. She warned the Respondent that she had received complaints from neighbours about vehicles and furniture in the garden. The witness told the Respondent she was preparing to serve her with an anti-social behaviour order and that she must maintain the property, and that she was aware of what had happened in her previous let with the Applicants.

49. The witness visited again two weeks later. She found her property had been poorly maintained. She had a decorator and joiner with her.
50. The witness was aware that social workers had also raised concerns about the state of the property after their bi-weekly visits.
51. After the tenancy ended, the letting agent reported that the property had been poorly maintained. There was surface damage and the walls required replastered and painted. The letting agent instructed the repairs. The property had been in good condition, and was redecorated, before the tenancy commenced.
52. The witness said the Applicants had contacted her. She knew Mr McIntosh through growing up in Saltcoats and they had mutual acquaintances. She gave permission for Mr McIntosh to contact her and she met him at the Property in December 2020. She found the Property utterly trashed. She was horrified at the destruction. There was human faeces on the floors and a horrendous smell of human waste. The wash hand basin in the bathroom was smashed off the wall, and the mirror was broken. The wardrobe doors were hanging off. The kitchen did not resemble a kitchen. The work surfaces were corroded and completely destroyed, with stains, holes and gaps. The oven door had been pulled off and the oven was filthy. There were holes on the walls, dog dirt on the floor, and the carpets were sodden. There were locks on the inside of the doors and it was a horrific situation. The windows were thick with layers of filth and grim and there was dirt on the walls. It did not resemble a home someone could live in.
53. The witness said the garage was full of waste and junk. The garden was full of litter, food, broken furniture, broken toys and dog chains. She said she had never seen anything like it. Asked how she knew the excrement in the house was human, the witness said she knew from the smell, as she has dogs herself.

Cross-examination of Ms McGill

54. The Respondent put to the witness that she had an email from the letting agent after the tenancy between the Respondent and the witness ended stating that all was fine with the property. She asked the witness why she had received her deposit back in full. The witness said she could not answer that as she did not write the email. The letting agent dealt with matters and reported to her. She had not seen anything to state that the deposit had been returned.
55. Responding to questions from the Tribunal as to whether there had been any discussion with the letting agent about the deposit at the time, the witness said she remembered asking the letting agent how to deal with the situation. She did not feel there should be any action taken in terms of recovery. She left matters to the letting agent and they ensured everything was dealt with.

56. The witness was asked if she had photographic evidence of the state of the property. The Witness said she presumed the letting agent would have this. Asked why she had not tried to recover any sums for damages, the witness said she was happy to get the Respondent out of her property after she'd seen the state of the Applicants' property.

Re-examination of Ms McGill

57. Under re-examination, the witness said she had no knowledge of whether the deposit paid by the Respondent for her property had been £2000 or whether it had been returned to the Respondent at the end of the tenancy.

58. Responding to questions from the Tribunal regarding the fact that the photographs of the Property do not show the bathroom wash hand basin hanging off the wall, the witness said the wash hand basin had been smashed and was detached from the wall. The witness said she discovered the Respondent had used deception when the local authority informed her. The witness said she has been a landlord since 2017 and has five properties. She thought the rent of her property was around £1000 per month.

Evidence of the Respondent

59. The Respondent said she disagreed that she had breached the tenancy agreement. She accepted that she had left some belongings in the Property but said she had to leave quickly.

- (i) Clause 2.3 – It was the Respondent's position that the windows were always open. Mr McIntosh had to come and repair the windows. She kept curtains closed sometimes because her disabled son wore a nappy. She required blackout blinds. The Respondent apologised for the amount of belongings left. She had paid the local authority to collect the items left in the garden but they did not do this. There was an impact from Covid, which meant there was a 5-month waiting list for uplift.
- (ii) Clause 2.8 – The Respondent said she had plants in pots in the garden. The van was her husband's and he would not take rubbish to the skip.
- (iii) Clause 2.9 – The Respondent said she picked up her rubbish, as she was in the Property all the time and had got an extra bin from the Council.
- (iv) Clause 4.2.2 – The Respondent said she tried her hardest to take reasonable care of the Property. It was her position that the Applicants knew how difficult things were with her son.

60. The Respondent agreed some of the rent arrears were due, possibly around three or four months at the most. She said she had changed to Universal Credit in January 2020, and received no benefit for seven weeks. Her Housing Benefit stopped. She was served with an eviction notice, with which she disagreed, then there was some harassment from Mr McIntosh. She was advised to hold back the rent. The Respondent said she believed she had paid more rent than the sums shown on the rent statement, but said she could not dispute the Applicants' sums.
61. The Respondent said the blinds were not filthy but may have needed repair. The carpets were not new when she moved in. She had taken photographs on her phone, but her son broke the phone and she was unable to get the photographs. She had cleaned the carpets regularly, and had bought a carpet cleaner. She disputed that there was human excrement on the carpets. There was some paint on the living room carpet. The hall carpet was worn. She had two dogs, and her son is disabled. Her son has issues with toilet training. She apologised that she had not replaced or cleaned the carpets at the end of the tenancy. The powder in the photographs was carpet cleaner where she had tried to remove some stains. She said she would not mind paying a quarter of the payment towards the carpets. She did not believe that the Applicants had paid to have carpets fitted and thought Mr McIntosh had probably fitted them. The Respondent said the Property was a mess, but it was nothing like had been described. Her dog had died six or seven months before the end of the tenancy and there was no dog excrement in the garden.
62. The Respondent totally disagreed that she had broken the alarm system. She said she would never touch electric or gas wiring. She did not pull the wires out. Four years earlier the alarm had started to go off. She had called the Applicants, and Mr McIntosh came. He asked if she needed the alarm and she had said no. Mr McIntosh gave her a code to use. He also took the box off the wall and dismantled it, saying he had paid £100 per year for maintenance. Responding to questions from the Tribunal, the Respondent said the alarm was left with a box cover. She had a coat rack above it. Her son could get into the cupboard and she would not have left it like it was in the photograph. The cover had fallen off by the time she left.
63. The Respondent said she was disputing the cost of decorating the Property. She painted the living room a year before she left the Property, and Mr McIntosh had said she did a good job. She also did some decorating a month before she left. She had been going to paint her son's room and Mr McIntosh had asked that it be painted back to cream. She disputed that the doors had to be replaced. Her bedroom required to be painted, so she would accept a sum of £200, although she questioned how the Applicants could charge for it if Mr McIntosh did the work. It was her position that the stains on the living room wall might indicate where the couch had been, or maybe the dog had jumped up. She said the living room and bedroom could have been painted with one 10 litre tub of emulsion at around £15.

64. It was the Respondent's position that she had taken the shower and handrails from the bathroom because she was upset that she had to wait two and a half years for a shower. She was willing to pay for the replacement shower. She disputed that new panels had been installed as they were not on the invoice. Handrails were around £8 each. She said she did not take the shower rail. The photographs showed the shower rail had not been replaced. She took the shower curtain and put it in the bin.
65. The Respondent said the vanity unit was hers. She paid £160 for it and the sinks. Only one sink was broken. Her son had grabbed something which fell and broke the sink. She tried to take the vanity unit and sinks with her but they were all connected. The Respondent disputed that she had done anything to the mirror, stating that the lead was gone from it when she moved in.
66. It was the Respondent's position that the doors did not require replacement, nor had they been replaced. The handles were the same as previously. She accepted that she had left the doors with holes that needed to be filled. She did not have the time to do it before leaving. The wardrobe door was on a rail and the rail had disconnected. She had shown the Applicants this. It was not broken and could be reconnected.
67. The Respondent said she accepted she left the kitchen in a state, but she only had an hour in which to leave the Property. There was some damage, but it did not need gutted. It was untidy and could have been cleaned. She had removed her massive fridge and there were bags behind it. The oven door was not hanging off. One door under the oven kept sticking. A kitchen drawer had broken four times. Her son was not allowed in the kitchen.
68. The Respondent's position in relation to the Sheriff Officer's fee was that she was already out before the eviction. She said she had tried to get a council house as she was sick of private lets. She could not get housing and the local authority had stopped paying the rent. They had to leave when they got another property as the local authority would not pay rent on two houses.
69. The Respondent said she did not believe the Applicants had paid the estimates provided. She believed they had got their friends to do the work.
70. Responding to questions from the Tribunal, the Respondent said she would have got rid of her furniture and cleaned the carpets if she'd had more time. She would have painted her son's room and cleaned the kitchen. She did not intend to leave the Property as she did.
71. The Respondent said that Mr McIntosh was coming into the Property drunk. There had been harassment the week that she left. She had tried to get information about this from the police, but it takes two months to get the information. She and Mr McIntosh had a disagreement, and another neighbour got involved in support of Mr McIntosh. Over a week before the Respondent left, she had told Mr McIntosh to leave the Property and not to come back. The Applicants lived in the same street as the Property. Mr

McIntosh had been drunk some months earlier and was coming to the door every day for five years. He was 'touchy feely' and would not take no for an answer. Everything built up over a period of a month. Mr McIntosh was outside the Property talking to neighbours all the time. He was pointing and saying that the Respondent was not leaving. The neighbour took his side, and the Respondent felt closed in.

72. The Respondent said she sent over 30 photographs of Ms McGill's property to the letting agent and received a response to say everything was fine and there was no disrepair. She got her £2000 deposit back and said she could prove this. It was her position that Ms McGill could have gone after her if there was damage. She was aware that the tenant before her had ruined the house, as the letting agent told her.

73. Responding to questions from the Tribunal, the Respondent said she was unable to get a council tenancy, and would have had to go into a hostel if she was homeless. She secured a private let. She signed up for the tenancy within a week. She knew Sheriff Officers were coming and she did not want to have to go into a hostel.

Further procedure

74. The hearing was adjourned to a date to be notified to parties.

75. A continued hearing set down for 9th September 2022 was postponed at the request of the Respondent.

76. Parties were notified of a continued hearing set down for 2nd November 2022 by letter dated 30th September 2022.

77. A continued hearing took place by telephone conference on 2nd November 2022. The Applicants were present and represented by Mr Walsh. The Respondent was not present.

78. Having heard from Mr Walsh, the Tribunal decided to adjourn to a further hearing to allow cross-examination of the Respondent, and summing up by both parties.

79. The Tribunal issued a Direction to the Respondent in the following terms:

The Respondent is required to provide:

- An explanation for her failure to attend the hearing scheduled for 2nd November 2022 at 10am, together with any available evidence to support the reason for her non-attendance.

80. By emails dated 3rd November 2022, the Respondent stated that her son had been in Intensive Care and that she had notified the Tribunal of her inability to attend.

The Hearing

81. A continued hearing took place by telephone conference on 6th February 2023. All parties were present. The Applicants were represented by Mr Walsh.

Cross-examination of the Respondent

82. The Respondent said she had viewed the Property before entering into the tenancy agreement. The condition of the Property throughout was good, although the garden was not in good condition. She accepted the tenancy as it was. The Respondent accepted her responsibilities in terms of clauses 1.5, 2.3, 2.8, 2.9, 4.2.2, 4.2.3 and 5.6 of the tenancy agreement and accepted that she had signed the agreement.
83. The Respondent said she had to leave the Property in a hurry and did not get a chance to do certain things. This was due to the actions of the Applicant, Mr McIntosh. The Respondent said the kitchen should have been left tidier. She was getting harassed and had to go to the police. Asked whether she had an incident number, she said yes, but she had been told that the police would only give the number to a lawyer. Mr McIntosh was told to stay away from her. He repeatedly came to the door and there are witnesses to this. Asked why she had not cited any witnesses, the Respondents said she had no lawyer, Mr Connolly was not available at the time and her mother was in a care home.
84. Referred to the photograph on page 48/76, the Respondent was asked about the damage to the door in the kitchen. She said Mr McIntosh was supposed to fix the drawer which had been falling off since 2015. The Respondent accepted the pictures were taken after she left the Property and that anything seen in the pictures was left by her.
85. Referred to page 50/76 the Respondent said she left one sofa and a table in the living room. She had asked the council to collect furniture, and paid for this, but the council had not collected the items so she had moved them back into the house. She said she had chased the council up, but there was a backlog due to Covid.
86. Referred to page 51/76, the Respondent said Mr McIntosh caused the damage to the alarm. The alarm went off in 2018 or 2019 and Mr McIntosh disabled it then put the box back on with one screw on either side. The box was still lying in the cupboard when the Respondent left. The Respondent said she would not play with electricity and did not pull any wires. The Respondent denied being responsible for this and said she did not pull out wires to stop the alarm beeping. She said she would not touch wires with her son living in the house.
87. Referred to page 54/76 the Respondent denied there was a fly infestation in the Property. The mess shown in the photographs had happened on the day she was leaving the Property.

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88. Referred to pages 55-61/76, the Respondent accepted she had left items and rubbish in the garden and garage, as she could not get everything into the removal van. She denied that she had left the items because they were damaged and she no longer needed them. Asked if she could have put the rubbish in the bin, the Respondent said she did not have time. It was her position that page 61 showed carrier bags that had been behind her fridge when it was moved.
89. Referred to page 62/76, the Respondent said there was no infestation of mice or rats. She had poison in the garage because she had cats, there were foxes in the area, and they lived near the beach.
90. Referred to page 63/76, the Respondent said her son threw a bottle at the bathroom sink and broke it. She said her belongings had fallen down the back of the vanity unit and she had to pull out the drawers to access them.
91. Referred to page 64/76, the Respondent said she removed the shower fitting, but she had paid for it. It was not the shower that was there when she moved in.
92. The Respondent accepted she had left a sofa and a bed. She accepted she had left chains on some of the doors.
93. The Respondent said she disagreed with the estimated invoice for carpets and fitting. It was her position that some of the carpets needed replaced, but not all of them. She did not believe that the Applicants paid the sums claimed or paid for a fitter.
94. The Respondent agreed that her son's medical problems meant a lot of work for her, saying that it depended on how ill he was. She said she was not perfect and Mr McIntosh knew about the problems from the start. He was okay with her son, but Mrs McIntosh was not.
95. Asked why she had not lodged the documents required by the Tribunal's Direction of 29th September 2021, the Respondent said she could not remember if she had lodged them. In respect of rent, she denied that the amount claimed by the Applicants was correct, saying she had always paid her rent but there was an issue with Universal Credit for the last few months of the tenancy.
96. The Respondent said she did not have much time in which to clear the Property. She was aware the bailiffs were coming, and she had hired a van and a man. Her husband also had a van, but it was not large enough. She could only afford to hire the van for a couple of hours. She could not go back to clean the Property because of the poor relationship with Mr MacIntosh. If they had got on better, she could have gone back, but he had put photos on the internet. He was in the Property within a day or two of the Respondent leaving the Property. She had tried to get a trampoline, but the Applicants had

a skip by then. The Respondent was confused about the date of eviction but accepted that the order for eviction was granted on 8th October 2020 and was to be executed by 9th November 2020. It was her position that she only had a week or two to move out, although she accepted, when informed by the Tribunal, that Ms McGill's evidence was that the subsequent tenancy commenced on 28th October 2020. While being cross-examined, the Respondent said she could not remember the last week far less two years ago. She was intimidated and frightened and could not go back. The Respondent denied she had used a false name to get the tenancy of Ms McGill's property.

Summing up on behalf of the Applicants

97. Mr Walsh submitted that both Applicants gave their evidence in a straightforward manner. There was no real dispute about the state of the Property. The Respondent was not really disputing the condition, but was putting forward mitigating circumstances. The damage to the Property was clear. The Applicants had no option but to renovate the Property. The work that was carried out was reasonable and necessary. The Property was not being looked after. The rent arrears had been accepted.
98. Mr McIntosh denied the conduct as suggested by the Respondent. In any event, it was irrelevant. The Applicants appreciated that the Respondent had difficulty due to the issues with her son, but it was submitted that his additional needs were not relevant to the case before the Tribunal.
99. The evidence of Ms McGill was compelling and clear. She visited the property and saw its condition. She said it was utterly trashed. She saw furniture in the garden. Ms McGill said her property was poorly maintained by the Respondent, and needed decoration after she had moved out. This indicates a pattern of behaviour. The Respondent moves in, cannot cope, and is neglectful. Some of her actions are destructive.
100. The Respondent was not credible in her evidence. She said at one point that she would have done the work that was required, but it was not feasible given the conduct of Mr McIntosh. She previously said she had one hour to leave. She had, in fact, one month's notice of when she had to leave, and at least ten or eleven days in which she could move her property. The Property did not have to be left in such a state.
101. The destruction was deliberate or, at least, reckless. The costs claimed were reasonable. The Applicants had no choice but to incur the cost. They have produced receipts.
102. The Applicants are seeking £500 in respect of the blinds, £400 in respect of the alarm, and £1400 in respect of redecoration. Mr McIntosh has produced an invoice to himself for this work. This may be an issue for the Tribunal. The Applicants are in the Tribunal's hands. There would have been a cost involved in carrying out the work.

103. The Respondent said she was accepting a quarter share of the carpet costs and a half share of the fitting costs. The Applicants are seeking the full costs of £538 for the carpets and £365.50 for the fitting.

104. The Applicants lodged evidence of work carried out, including photographs of the Property before and after the tenancy. The photographs provide significant evidence of the damage caused, and the condition of the property after the repairs were carried out.

105. The Applicants have proved their case. They seek £3276.96 in rent arrears and £12,001.18 in repairs, totalling £15,278.14.

106. The Respondent admitted that she cannot remember what happened last week, far less two years ago, so the Tribunal should bear that in mind.

Summing up by the Respondent

107. The Respondent apologised for not having a lawyer. She had tried to get one. She wanted the Tribunal to be aware that she did not take the matter lightly. She took full responsibility for certain things.

108. The Respondent had been in the Property for five years. It was suitable for her son, and she wished she did not have to move. After she got the disabled toilet installed, everything fell apart. Mr McIntosh had told her he wanted to sell the Property, but that was not true. A lot has happened between them that made her feel uncomfortable, but she could not prove this.

109. The Respondent had tried her hardest. She had difficulties with her son. At the end of 2019 there was a lot of confrontation with Mr and Mrs McIntosh, and things were not good. She was glad to be out of the property.

110. The Respondent does not agree with the full amount claimed. Some of the carpets were fine. There was paint on the living room carpet when she moved in. Mr McIntosh was supposed to do repairs. Eventually, he could not come into the property because of police involvement.

111. The invoices and amounts claim did not add up. A lot of the bills claimed were quotes rather than invoices. The Respondent does not believe that Mr McIntosh has paid for half of what he has claimed. He says he paid a lot with cash. You don't do that with a business. The amounts claimed were not receipted properly. There were handwritten receipts from Mrs McIntosh. These would not be acceptable to an auditor or HMRC.

112. Nothing had been proven in respect of the Respondent's behaviour while in Ms McGill's property. She got her full deposit back and wondered why that was the case. She has photos and should have submitted them, but she had no lawyer. She disputed the allegation that she was constantly leaving houses untidy.

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113. Mr McIntosh knows her and what she went through. She had no choice and had to leave. The Respondent said she had checked the date of the move, and found that she had a van and a man on 9th November 2020. She had one day to get everything out.

114. The Respondent said she was sorry there was so much mess. She got a lot of hassle at a new address and some of it was from Mr McIntosh. She said both parties were to blame. She accepted that some of the carpets, and the kitchen, were in a mess. She felt intimidated by Mr McIntosh when he was drunk and came to her door. He was aggressive. Her husband was not there a lot of the time, or her mother. It should not have got to this stage. She was not able to be alone with Mr McIntosh, but there is blame on both sides.

115. Responding to questions from the Tribunal, the Respondent said she did not think the Applicants should be able to claim £1400 for painting and decorating. She did not believe Mr McIntosh did a lot of the work that he claimed. She believed they were claiming too much for the kitchen. One door was constantly falling off and one drawer was broken. The worktop only needed to be sanded down. No real bills have been provided for the kitchen work, just estimates.

Findings in Fact and Law

116.

- (i) The Applicants are the heritable proprietors of the Property.
- (ii) Parties entered into a short-assured tenancy in respect of the Property, commencing on 12th December 2015.
- (iii) An order for possession of the Property was granted by a Tribunal on 8th October 2020.
- (iv) The tenancy ended on 9th November 2020.
- (v) The Respondent breached clause 2.3 of the tenancy agreement by failing to take reasonable care of the Property and allowing damage to be caused to the accommodation, decoration, fixtures and fittings, namely the doors, blinds, carpets, kitchen worktop, oven, and bathroom fittings.
- (vi) The Respondent breached clause 2.8 of the tenancy agreement by failing to keep the garden tidy.
- (vii) The Respondent breached clause 2.9 by failing to put all household rubbish in the proper place allocated for it.

- (viii) The Respondent breached clause 4.2.2 by failing to take reasonable care of the accommodation, and failing to keep the accommodation in a reasonable state of cleanliness and decoration.
- (ix) The Respondent breached clause 4.2.3 by failing to repair damage to the accommodation, namely the doors, blinds, kitchen worktop and bathroom sink.
- (x) The Respondent breached clause 5.6 of the tenancy agreement by
 - (a) failing to leave the accommodation in a clean and tidy condition and in good decorative order before moving out;
 - (b) failing to remove all property not belonging to the landlord;
 - (c) removing fixtures and fittings installed without the landlord's written permission, including the shower and fittings;
 - (d) failing to put right damage caused; and
 - (e) failing to carry out repairs.
- (xi) The Applicants are entitled to recoup sums reasonably paid to reinstate the Property following the Respondent's breach of tenancy agreement.
- (xii) In terms of the tenancy agreement, rent was due in the sum of £630 per month from June 2019.
- (xiii) Rent lawfully due was not paid by the Respondent to the Applicants.
- (xiv) The Applicants are entitled to recover rent lawfully due.

Reasons for Decision

117. The Tribunal considered that the evidence before it proved that the Respondent had breached several clauses of the tenancy agreement. The Respondent accepted this, to some degree, and put forward mitigating circumstances. While the Tribunal recognised that life was not easy for the Respondent, given the significant issues in respect of her son, and that this had an impact on her ability to comply with the terms of the tenancy agreement, this did not absolve the Respondent from her responsibilities in terms of the tenancy agreement. Although the Tribunal accepted that there was a breakdown in the relationship between Mr McIntosh and the Respondent, the Tribunal did not consider that this prevented the Respondent from complying with the terms of the agreement between the parties. When the eviction order was granted, the Respondent then had a month in which to

ensure that the Property was left in an acceptable condition in terms of cleanliness and repair.

118. The Tribunal accepted the evidence of the Applicants, which was supported by the photographic evidence, that the blinds required to be replaced. The Tribunal noted that the Respondent had accepted that she had removed some blinds, and that some blinds required to be repaired. The Tribunal accepted the claim for £500 from the Applicants in this regard.
119. The Tribunal accepted the evidence of the Applicants that the carpets required to be replaced, as supported by the photographic evidence. The Tribunal preferred the evidence of the Applicants in this regard. The Tribunal awarded the sums of £538 in respect of the purchase of carpets, and £365.50 for carpet fitting.
120. The Tribunal accepted the hand-written receipt lodged by the Applicants for the sum of £400 in respect of the alarm system, it being one of the few receipts that appeared to have a contractor's signature. However, the Tribunal was not persuaded on the balance of probabilities that the Respondent damaged the alarm system. It was not clear from the photographs supplied that the system was damaged beyond repair, or that wires were pulled out or cut. The damage to the system may have been a result of the box having fallen off after Mr McIntosh's intervention, and coats being hung on top of it, but the evidence was not conclusive. The evidence indicated that a couple of inspections of the Property were carried out, and the Tribunal would have expected the damage to the system to have been noted at those times, and attended to. Furthermore, the Tribunal was not persuaded that the system could not have been repaired, and that a new system was required. The Tribunal did not make any award for the new alarm system.
121. The Tribunal accepted the Applicants' evidence that the Property required to be decorated throughout at the end of the tenancy. The Tribunal took into account that no evidence was provided of the extent and cost of Mr McIntosh's time or the material involved. The Tribunal considered the sum of £1400 to be excessive and decided to award the sum of £700 to cover the cost of materials and Mr McIntosh's time.
122. The Tribunal accepted the Applicants' evidence that new doors were required throughout the Property, due to the locks and chains applied and removed by the Respondent, which were evidenced in the photographs lodged. The Tribunal awarded the sum of £550 plus VAT (£660) for eight new doors.
123. The Tribunal saw no evidence that the wardrobe doors were damaged beyond repair. No photographs were provided in this regard, and the Tribunal took note of the Respondent's claim that the doors had come off the rail and could have been reconnected. No sum was awarded for the two wardrobe

doors. The Tribunal awarded the sum of £300 plus VAT (£360) for the labour involved in fitting the new doors.

124. The Tribunal awarded a sum of £225 for the skip, which appeared to be a necessary expense.
125. The Tribunal accepted the evidence of the Applicants that works were required to the bathroom due to the Respondent's breach of contract. The Respondent did not deny that the bathroom sink was broken, or that she removed the shower. The Tribunal awarded a sum of £1860 in this regard.
126. The Tribunal was not persuaded that the kitchen required to be replaced. Mr McIntosh stated in evidence that he did not get an estimate for replacing it, and considered it would be cheaper to replace than repair, as he wanted the Property to be fitted out to a good standard. From the photographic evidence, the Tribunal accepted that the worktop and oven required to be replaced; however, the units, with the exception of one drawer and one cupboard door, did not appear to be damaged. The Tribunal took the view that it was likely that the drawer and cupboard door could have been repaired. There was no evidence that the hob or extractor fan were damaged beyond repair. The Tribunal awarded the sum of £493.16 plus VAT (£591.79) for the oven and worktop. Accordingly, the Tribunal did not award any sum for fitting the kitchen. Indeed, the Tribunal noted a contradiction in the evidence in this regard. The quote from MBE Plumbing and Heating stated £1500 for fitting the kitchen, but Mr McIntosh stated in evidence that he did the work himself. Whether or not he did the work was immaterial after the Tribunal decided that the kitchen did not require to be replaced.
127. The Tribunal did not award any sum in respect of the Sheriff Officer's fee for eviction. The tenancy agreement did not provide for the recovery of this cost, and no legal basis was provided for seeking to recover this cost.
128. The Tribunal awarded the sum of £3276.96 in respect of the rent arrears. The Tribunal noted that the Respondent accepted that some arrears were due, and that no evidence was provided by the Respondent to contradict the figure claimed by the Applicants.

Decision

129. An order for payment is granted in the sum of £9,077.25 in favour of the Applicants.

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.

Helen Forbes

Legal Member/Chair

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Date: 06/02/2023