



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/21/2427**

**Re: Property at Flat 1/1, Western Harbour Breakwater, Edinburgh, EH6 6PZ (“the Property”)**

**Parties:**

**Heather Burnside, 29 Whitehill Village, Dalkeith, EH22 2QD (“the Applicant”)**

**Dawn Morrison, Flat 28, 3 Merlin Crescent, Edinburgh, EH5 1GU (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of One thousand five hundred and sixty nine pounds and eight pence (£1569.08).**

**Background**

- 1 By application to the Tribunal the Applicant sought an order in the sum of £1569.08 against the Respondent in respect of outstanding rent arrears, cleaning costs and damages arising from the former tenancy between the parties.
- 2 There were no grounds upon which to reject the application therefore a Case Management Discussion was assigned for 21 January 2022, to be held by teleconference as a result of the ongoing coronavirus restrictions. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and details for joining the teleconference was served on the Respondent by Sheriff Officers.

## The Case Management Discussion

- 3 The Case Management Discussion took place on 21 January 2022. The Respondent was not in attendance. The Applicant was personally present and represented by Mr Moore, of Moore MacDonald Solicitors. The Applicant confirmed that she was content for Mr Moore to represent her in the proceedings.
- 4 The Legal Member noted that the Respondent had been served with the application paperwork and the details of the Case Management Discussion. On that basis the Legal Member was content that she had received proper notification and determined to proceed with the Case Management Discussion in her absence.
- 5 Mr Moore addressed the Tribunal on the various aspects of the claim. With regard to the rent arrears, he confirmed that the rent was £1000 per month and the Respondent had failed to maintain payments. The deposit had been applied to the rent arrears leaving a balance of £297.20. He confirmed that requests for payment had been made to the Respondent but she had failed to engage. In respect of the cleaning costs, he confirmed that an external contractor had been instructed to carry out these works and an invoice was available. Finally he advised that the damages related to a cracked toilet pan (£204), a broken wardrobe door (£400), a soiled mattress (£202.80) and damaged bedroom blinds (£235). He made reference to the photographs submitted by the Applicant which showed the condition of the items at the commencement of the tenancy, which were supported by the inventory of contents also lodged. He further noted the photographs submitted which showed the damage referred to following the Respondent's departure. Mr Moore confirmed that the Applicant had receipts and invoices for all items which could be submitted.
- 6 The Legal Member asked Mr Moore to give a view on the betterment principle, namely that a landlord should not be better off at the end of the tenancy. This often required a judgement to be made on the lifespan on an item to ascertain a fair replacement cost. Following consultation with the Applicant, Mr Moore confirmed that the wardrobe and the toilet were both new when the property was built in 2008. However he submitted it would be reasonably expected that both items would last for a period far beyond a thirteen year period. The mattress and the blinds were both new when the property was let in 2019. Mr Moore submitted that the damage to all items went far beyond fair wear and tear. It was not a case of a simple repair, all items required to be replaced due to the extent of the damage caused by the Respondent.
- 7 Following the Case Management Discussion, Mr Moore submitted by email to the Tribunal the aforementioned invoices and receipts for the cleaning costs and damages which aligned with the sums sought in the application.

## Reasons for Decision

- 8 The Tribunal was satisfied that it had sufficient information at the Case Management Discussion to take a decision on the application and that to do so would not be prejudicial to the parties. The Respondent had been given the opportunity to participate in the proceedings but had chosen not to do so. There were therefore no issues to be resolved that would require a hearing to be fixed.
- 9 The Tribunal was satisfied, having regard to the tenancy agreement, rent statement and invoice submitted, that the Applicant was entitled to recover the outstanding rent arrears and cleaning costs. In respect of the damages, the Tribunal had considered the application of the betterment principle, but ultimately accepted the position put forward by the Applicant. It was noted that the mattress and the blinds were both new at the start of the tenancy and there would have been no expectation that they would require replacement at such an early stage. The Tribunal therefore agreed that the full costs were recoverable by the Applicant. In respect of the wardrobe and the toilet bowl, the Tribunal agreed that both items should have an extended lifespan, and having regard to the damage caused, the Tribunal again concurred with the Applicant that there would have been no expectation that either would require replacement within a 13 year period and that the nature of the damage was evidently careless and potentially wilful, as opposed to fair wear and tear.
- 10 Accordingly, there being nothing put forward by the Respondent to contradict the evidence put forward by the Applicant, the Tribunal determined to make the order sought in the sum of £1569.08.

## 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.**

  
**Ruth O'Hare**

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**Legal Member/Chair**

21 January 2022

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**Date**