



**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/22/0528**

**Re: Property at 17 Spital, Aberdeen, AB24 3HT (“the Property”)**

**Parties:**

**Miss Cara Macbean, Miss Georgia Cherry, Miss Bethan Gordon, Miss Sarah Sadiq, Miss Sarah Jamieson, Miss Katie Watson, Miss Alicja Rachowska, 29 Orchard Street, Aberdeen, AB24 3DA; 29 Orchard Street, Aberdeen, AB24 3DA; 29 Orchard Street, Aberdeen, AB24 3DA; 65 Linksview, Aberdeen, AB24 5RG; 65 Linksview, Aberdeen, AB24 5RG; 53C Orchard Street, Aberdeen, AB24 3DB; 53C Orchard Street, Aberdeen, AB24 3DB (“the Applicant”)**

**Comper & Company Ltd, 10 Rubislaw Den North, Aberdeen, AB15 4AN (“the Respondent”)**

**Tribunal Members:**

**Miss H Forbes (Legal Member) and 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 £3287.01.**

**Background**

1. This is an application submitted under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicants are seeking return of their tenancy deposit in the sum of £4200. The Applicants lodged a copy of a private residential tenancy agreement commencing on 1<sup>st</sup> September 2021, communications between the parties, inventory report, PRT supporting notes, photographs and video evidence.
2. The Respondent lodged a document entitled Statement of Claim, which set out her response to the application. The Respondent also lodged inventory reports and photographs.

3. A Case Management Discussion (“CMD”) took place on 28<sup>th</sup> July 2022 at which point the case was set down for a hearing on whether the Tribunal had jurisdiction to hear the case given that the tenancy deposit had been lodged with an approved tenancy deposit scheme.
4. A hearing took place by telephone conference on 19<sup>th</sup> October 2022. The Tribunal found that it had jurisdiction to hear the substantive case on whether the Respondent was entitled to retain the tenancy deposit. The breakdown of the retained deposit as retained by the Respondent was as follows:
  - (i) £2683 – one month’s rent as notice not given correctly
  - (ii) £360 – solicitor fee for putting tenancy agreement in place
  - (iii) £183.33 – rent arrears
  - (iv) £570 – cleaning
  - (v) £417.39 – damage to property or contents

### **The Hearing**

5. A hearing took place by telephone conference on 20<sup>th</sup> February 2023. The Applicants Miss Cara Macbean, Miss Sarah Jamieson and Miss Sarah Sadiq were in attendance. Miss Katie Watson joined the call later in the morning. The Applicants were represented by Mr Callum Leeson. The Respondent was in attendance.
6. Evidence was heard in respect of the following matters:

### **Notice given by Applicants**

#### **The Applicants’ position**

7. The Tribunal heard that the Respondent had retained the sum of £2683 of the tenancy deposit, which equated to one month’s rent, on the basis that notice to end the tenancy had not been given correctly by the Applicants.
8. Mr Leeson explained that five of the Respondents had rented the Property the previous year with two other tenants. On 31<sup>st</sup> July 2021, the Respondents entered into a second tenancy agreement in respect of the Property, the second tenancy to commence on 1<sup>st</sup> September 2021.
9. Mr Leeson referred to production 6.2, which comprised copy emails from the Applicants to the Respondent, giving notice to terminate the tenancy. The following emails were referred to:
  - (i) Alicja Rachowska email of 19<sup>th</sup> August 2021, stating she would leave on 16<sup>th</sup> September 2022, and asking if it would be possible to leave before the end of August.

- (ii) Katie Watson email of 1<sup>st</sup> September 2021, made on behalf of the remaining 6 Applicants, giving notice to leave the Property on 30<sup>th</sup> September 2021.
- (iii) Response to Katie Watson from the Respondent (page 10 of Respondent's Statement of Claim) stating that the notice referred to above did not bring the tenancy to an end as all tenants had to give notice. The Respondent added that the end date must be more than 28 plus 2 days from the date of the notice, and that all joint tenants would need to state the same end date.
- (iv) Sarah Jamieson email of 1<sup>st</sup> September 2021, giving notice to leave the Property on 30<sup>th</sup> September 2021.
- (v) Sarah Sadiq email of 2<sup>nd</sup> September 2021, giving notice to leave the Property on 30<sup>th</sup> September 2021.
- (vi) Bethan Gordon email of 2<sup>nd</sup> September 2021, giving notice to leave the Property on 30<sup>th</sup> September 2021.
- (vii) Georgia Cherry email of 2<sup>nd</sup> September 2021, giving notice to leave the Property on 30<sup>th</sup> September 2021.
- (viii) Cara Macbean email of 2<sup>nd</sup> September 2021, giving notice to leave the Property on 30<sup>th</sup> September 2021.

10. Mr Leeson said clause 24 of the tenancy agreement provided for 28 days' notice. It was his position that the Respondent was incorrect in requiring a further 48 hours to be added to the notice period. Responding to questions from the Tribunal as to the wording of clause 4 of the tenancy agreement, which provided that a document sent electronically or by recorded delivery would be regarded as having been received 48 hours after it was sent, and that the extra delivery time should be factored into any required notice period, Mr Leeson maintained that this was only applicable to the landlord and not the tenant. The Respondent had not notified the Applicants of any issues with their notices, and they refuted that they had not given notice correctly. Mr Leeson referred to the email below the email mentioned at (i) above, whereby Alicja Rachowska asked the Respondent on 1<sup>st</sup> September 2022 if she could move out early. There had been no response to the email.

### **The Respondent's position**

11. The Respondent said she received Katie Watson's email on 1<sup>st</sup> September 2021 and responded immediately, as set out at point (iii) above. The Applicants did not all give the same end date, as Alicja Rachowska wished to leave in mid-September, while the other Applicants stated 30<sup>th</sup> September as the end date. It was the Respondent's position that she recovered the Property on 1<sup>st</sup> October 2021, and the notice period began then with the

tenancy ending on 30 October. The Respondent said she had taken legal advice and her position had been informed by the advice.

## **Solicitor's Fee**

### **The Applicants' position**

12. Mr Leeson referred to page 11 of the Respondent's Statement of Claim which showed a solicitor's invoice in the sum of £360 for a lease preparation fee dated 22<sup>nd</sup> July 2021.
13. Mr Leeson referred to page 22 of the PRT supporting notes, which provide: *The landlord is not allowed to charge a tenant for other services - such as the cost of preparing a lease.* Mr Leeson also referred to the tenancy agreement which mentions a deposit, but does not mention any other premiums. It was his position on behalf of the Applicants that the Respondent had unjustly retained the solicitor's fee at the expense of the Applicants

### **The Respondent's position**

14. The Respondent said she believed it was unjust for her to have to pay a solicitor's fee when the Applicants knew they were going to terminate the lease. Responding to questions from the Tribunal, she said she believed they knew in July 2021 that they would be leaving. It was her position that they must have been looking for another property, particularly as Alicja Rachowska gave notice in August. They had been living in the Property for one year, so they knew what it was like. It was not as if they had moved in and did not like the Property. It was unjust to be given notice on the day the tenancy commenced.

## **Rent Arrears**

### **The Applicants' position**

15. Mr Leeson said the Applicants had never been notified of rent arrears and no reason had been provided by the Respondent to explain the claim of £183.33.

### **The Respondent's position**

16. The Respondent referred to page 9 of her Statement of Claim, which showed the rent paid by the Applicants for September 2021. Due to the fact that Alicja Rachowska only paid £200 to the date of her leaving, the rent for the month was short by £183.33.
17. Responding to questions from the Tribunal as to why the Respondent had not told the Applicants that she was unhappy with the notice given, the Respondent said she made it really clear to Katie Watson on 1<sup>st</sup> September 2021 what was required. She did not have to do that, but she had done so. Asked when she was able to re-let the Property, the Respondent said this did

not happen until July 2022, as she had missed the student period by the time the Applicants left. It was her position that the Applicants prevented another group of students from letting the Property, and that no students were still looking for accommodation in October.

## **Cleaning**

### **The Applicants' position**

18. Cara Macbean gave evidence that there had been multiple inspections of the Property during the tenancy and no issues had been raised as to cleanliness. When the previous two tenants moved out in August 2021, all that was mentioned by the Respondent as being required by way of cleaning was dusting, as shown in Production 6.6, which was a message exchange between the parties on 31<sup>st</sup> August 2021.
19. At a previous inspection, according to Miss Macbean, the Respondent had not wanted to see upstairs, and was more than happy with the condition of the Property.
20. The photographs in Addendum 6(5) were referred to. It was Miss Macbean's position that these showed the Property had been left in a clean and tidy condition. They had spent two days cleaning the Property, assisted by their parents. They had used cleaning products, and had left the Property as they found it. Responding to questions from the Tribunal, Miss Macbean said there was no inspection at exit. They had not received a response from the Respondent to their notices and, when they left on 30<sup>th</sup> September 2021, they left the keys to the Property on the hall table.
21. Mr Leeson submitted that the two tenants who left in August 2021 were given an opportunity to remedy minor cleaning issues and their full deposit was refunded. They were not asked to use a professional cleaning company to carry out cleaning.
22. The Tribunal was shown the video of the Property, which was taken in one bedroom at the end of the tenancy. Miss Macbean spoke to the room being clean and dust-free. The flooring and skirtings were clean and the rug had been hoovered. The mattress and bed-frame were clean, the bedside drawers were polished, the fireplace was dusted, the mirror was not marked, and the ceiling was clean.
23. It was the Applicants' position that the cleaning charges claimed by the Respondent, namely 38 hours at £15 per hour were excessive. No quotes or invoices had been provided from a professional cleaning company. The guidelines provided did not mention cleaning the windows outside. The fact that there was no smell of cleaning products did not mean the Property had not been cleaned.

## The Respondent's position

24. The Respondent said she inspected the Property on 1<sup>st</sup> October 2021 and she found no smell of cleanliness. She had provided the Applicants with guidelines on how to deep clean a property and this included advice to hire a professional cleaning company. There was more than just dusting required. The previous tenant called Morgan had been very clean and had commented that the Property was very clean at the start of the tenancy, as shown in a message on page 4 of the Statement of Claim. The Respondent said she had provided four new mattresses in September 2020, five new desk chairs in December 2020 and a replacement chest of drawers and bedside table in January 2021. She had carried out fewer inspections of the Property due to Covid, with inspections on 30<sup>th</sup> October 2020 and 31<sup>st</sup> July 2021. There would normally have been four. It was not correct to claim there had never been any issues with the Property. The Respondent referred to her production 1.5.1, which contained photographs from the July 2021 inspection. The Respondent referred to photographs within the report which showed soiled skirting boards, stains on a door, debris under the sofa, an untidy cupboard, dirt underneath the cooker, rubbish in the boot room, an untidy laundry room, and items banned under the terms of the lease (candles). The Respondent referred to production 1.5.2 which was the inspection report, outlining the issues found. She said she spoke to the Applicants about the issues after the inspection.
25. On 31<sup>st</sup> August 2021, the Respondent inspected the rooms of the two tenants who left that day. They had cleaned their rooms to a good standard ready for two new tenants moving in the following day. She did not inspect the rest of the Property but did admit to saying that the communal areas "looked clean". Responding to questions from the Tribunal, the Respondent said the tenants appeared to have tidied up following the July inspection.
26. Asked by the Tribunal why she had not given the Applicants an opportunity to remedy the issues with cleanliness on 1<sup>st</sup> October 2021, the Respondent said two of the Applicants came to the Property on that date, and she showed them the state of the Property. They commented that it was in the same state when they moved in. She could not believe they would say such a thing and took the view that it was clear the Applicants were not interested in addressing the issues.
27. The Respondent said she also discovered the gas meter was not working. She had been told by Morgan that there was a problem, but the Applicants did not notify her further. This caused a delay in getting check-out matters and the end of tenancy report finalised.
28. The Respondent referred to the inventory report that she had lodged, taking the Tribunal through the photographs taken at the end of the tenancy. The Respondent spoke to various issues with the Property including:
- (i) Windows and sills unclean
  - (ii) Marked walls, glass, furniture, and woodwork

- (iii) Dust and debris on floors and behind appliances
- (iv) Dust and marks on skirting, moulding, and light fittings
- (v) Stained rugs
- (vi) Rubbish in storage cupboard
- (vii) Kitchen cupboards, and fridge not cleaned
- (viii) Freezer not defrosted
- (ix) Smears on cooker glass and sinks
- (x) Bins not cleaned
- (xi) Marks on shower
- (xii) Stained mattresses and sofa
- (xiii) Spill inside coffee table drawer

29. The Respondent said she did the cleaning with her daughter and a friend. She charged £15 per hour, and this was cheaper than a company. It is a very big house. The woodwork and walls had to be washed down with hot water and cleaning product, then rinsed. Re-decoration was required, but the Respondent did not charge for that. She expected some decoration would be required at the end of the tenancy. All rugs but one were shampooed.

30. Responding to questions from the Tribunal, the Respondent said she owns one other property, which is the house next door. She has been a landlord for 13 years. She said she had seen worse in the past, but she was certain the Property had not been cleaned. It was her position that the charge was reasonable. She usually gets quotes from cleaning companies but has found them to be too expensive.

### **Response from the Applicants**

31. Miss Macbean said the cleanliness of the Property was of an average level when the tenancy commenced, and there was no smell of cleaning products at that time. There were signs of wear and tear and some things were wobbly. Several mattresses were stained and lumpy and had to be replaced. The floors were hardwood and were never really clean. The Applicants did not walk on them without shoes. There was dust and dirt in the cracks between the floorboards. They left the Property as close to the same condition as they had found it. Miss Macbean said they may have missed debris behind appliances but these were never pulled out, and there was no evidence of what they were like at the start of the tenancy.

32. Responding to questions from the Tribunal, Miss Macbean said there were grubby marks on the walls and skirtings, and stains on rugs, when they moved in. There were seven students living in the Property and they tried their best. There was mould in the bathroom and on doorframes. The Respondent painted the bathroom to deal with the mould at one stage. Asked how she would know if a property was cleaned to a professional standard, Miss Macbean said she had been in multiple student flats, and you could just tell.

## Damage

### The Respondent's Position

33. The Respondent took the Tribunal through photographs showing damage to the following, and corresponding invoices for their repair or replacement:
- (i) Mattress – stained and wet, due to a wet mattress cover - £139.99
  - (ii) Radiators – two radiators were detached from their brackets on the wall - £159.60
  - (iii) Shower door wheels broken (included in figure above at (ii))
  - (iv) Chest of drawers – marks on top surface - £25
  - (v) Bedroom door moulding damaged by hooks - £12.50
  - (vi) Living room door handle detached - £12.50
  - (vii) Coffee table damage - £22.80
  - (viii) Rug – £25
  - (ix) Stained Mattress - £20
34. The Respondent said the rug was not replaced, but it had been new at the start of the tenancy. The mattress was an older mattress and required to be replaced anyway. Responding to questions from the Tribunal as to what allowances she had made for fair wear and tear in respect of the mattresses, the Respondent said she had given the Applicants mattress protectors, some of which were waterproof.

### The Applicants' position

35. Miss Macbean said there was a stain on the mattress in room 8 when Lauren moved out and it was her responsibility. She had no knowledge of anyone putting a wet mattress cover on the mattress and did not think anyone would have done this.
36. The Applicants were not aware that the radiators had become detached. They were still in place, as seen in the photographs. The shower door wheels came off all the time due to wear and tear, and they were fixed by a handyman. Miss Macbean said she did not know if the scratches on the chest of drawers were there at the start of the tenancy, and the damage to the moulding may have been caused by hooks. The door handle had been wobbly for a couple of months. The photo showed it had been dismantled. It was not like that when the Applicants left. They would have been unable to use the door if there was no handle. There was a stain on the coffee table at the start of the tenancy, and the rug was stained. The bed was on top of the rug and the stain was hidden. Some of the rugs smelled bad when the Applicants moved in.
37. Mr Leeson submitted that there was fair wear and tear, particularly due to the number of occupants using appliances, and the fact that it is a large, old property. There was nothing to indicate the quality or age of the items of

furnishing or appliances at the start of the tenancy. The two Applicants who had not lived there during the previous tenancy were given no check-out reports or photographs to show the condition of the Property.

38. Mr Leeson referred the Tribunal to production 6.7 which was an inventory report compiled by the Applicants on 29<sup>th</sup> August 2020, at the start of the first tenancy. This referred to loose floorboards, marked floors and door, cracked walls, stained and uncomfortable mattresses, and scratched furniture. The report had been shared with the Respondent at the time.

### **Response from Respondent**

39. The Respondent said she had been pleased to get the Applicants' inventory report at check-in, and pointed out that there was nothing on it to indicate the Property was not clean. She had updated the inventory and provided new mattresses. With regard to Lauren's mattress, the Respondent said it was not stained when she moved out, and the damage had occurred within one month.
40. The Respondent said the Property was built in 1875. She had taken wear and tear into account and had not charged in respect of this. There were two showers and a bath shared between the seven occupants. There was no mention of the coffee table stain or the rugs on production 6.7. The radiators must have been damaged by the Applicants, possibly due to being sat upon. The mould was caused by the Applicants and their use of the Property. The Respondent had replaced the bathroom extractor fan due to mould on the bathroom ceiling.
41. The Respondent said she is a trained cleaner and has been for a long time. Cleaning is a skill. Although she recommended the Applicants use professional cleaners, she could not insist on this. The Property would have smelled fresh and clean if it had been cleaned by the Applicants.

### **Further remarks**

42. Mr Leeson said all Applicants had handed in their notice correctly as per the tenancy agreement. The solicitor's fee was an unjust payment. No issues in respect of rent arrears had been raised before now. The condition of the Property was good at the end of the tenancy, and fair wear and tear should be taken into account.
43. Responding to questions from the Tribunal, Miss Macbean said the alleged rent arrears were due to Alicja Rachowska leaving early. Alicja had asked if she could pay half the rent and had received no response from the Respondent, so she did what she had said in her email. The Applicants may accept the shortfall in the rent was due.
44. Responding to questions from the Tribunal as to what the Applicants would have done if the Respondent had contacted them about the cleanliness of the

Property, Miss Macbean said they would have gone back. She said they had a great relationship with the Respondent and would have tried to resolve the issues to keep everyone happy.

45. Responding to questions from the Tribunal, the Respondent said she would normally meet the tenants on the day of check-out. She assumed they were not interested, due to the comments made by the two Applicants who had returned to the Property to collect items when she pointed the issues out to them. She described herself as a good landlord. She had accepted the cleanliness of the rooms of the two tenants who had left at the end of August 2021 as one of the mothers was there, she knew how to clean, and the rooms had been cleaned to a correct standard.

### **Findings in Fact and Law**

46.

- (i) The Respondent is the heritable proprietor of the Property.
- (ii) In terms of a tenancy agreement that commenced on or around 1<sup>st</sup> September 2020, five of the Applicants, along with two other tenants, occupied the Property.
- (iii) On or around 31<sup>st</sup> July 2021, the parties signed a tenancy agreement in respect of the Property to commence on 1<sup>st</sup> September 2021 with rent due in the sum of £2683 per month.
- (iv) The Respondent paid a solicitor's fee of £380 in respect of preparation of the new tenancy agreement, by invoice dated 22<sup>nd</sup> July 2021.
- (v) The Applicants paid a tenancy deposit in the sum of £4200.
- (vi) On 19<sup>th</sup> August 2021, Alicja Rachowska gave notice to the Respondent that she wished to end her tenancy and leave on 16<sup>th</sup> September 2021, or earlier if permitted. The Respondent did not reply to Alicja Rachowska.
- (vii) On 20<sup>th</sup> August 2022, the Respondent contacted Georgia Cherrie to discuss Alicja leaving. The Respondent asked Miss Cherrie if the Applicants were considering finding a friend to replace Alicja. Miss Cherrie replied that they were considering their options.
- (viii) On 31<sup>st</sup> August 2021, two tenants left the Property.
- (ix) On 31<sup>st</sup> August 2021, the Respondent inspected the rooms of the two tenants and, having provided a further opportunity to them to carry out further dusting and cleaning, found them to have been cleaned to a satisfactory standard.

- (x) On 1<sup>st</sup> September 2021, a new tenancy agreement came into place. There was no check-in inventory provided at this time.
- (xi) On 1<sup>st</sup> September 2021, Katie Watson emailed the Respondent on behalf of six of the Applicants to give notice of termination of the tenancy with an end date of 30<sup>th</sup> September 2021.
- (xii) On 1<sup>st</sup> September 2021, the Respondent replied to Katie Watson that the end date must be 28 days plus 2 days from the date of notice, and that all tenants must give notice and vacate, and all must state the same end date.
- (xiii) On 1<sup>st</sup> September 2021, Sarah Jamieson emailed to give notice to the Respondent, with an end date of 30<sup>th</sup> September 2021.
- (xiv) On 2<sup>nd</sup> September 2021, the remaining four Applicants emailed their individual notices to the Respondent, with an end date of 30<sup>th</sup> September 2021.
- (xv) The Respondent did not respond to the notice given by the Applicants.
- (xvi) On 16<sup>th</sup> September 2021, Alicja Rachowska left the Property.
- (xvii) On 30<sup>th</sup> September 2021, the remaining six Applicants left the Property.
- (xviii) There was a shortfall of £183.33 in the rent paid for September 2021. The Applicants had joint and several liability to pay the full rent for the month, and the Respondent is entitled to the sum of rent.
- (xix) On 1<sup>st</sup> October 2021, the Respondent carried out a check of the Property, and was unhappy with the cleanliness of the Property.
- (xx) The Respondent did not afford a proper opportunity to the Applicants to return to address the issues in regard to cleanliness.
- (xxi) The Respondent discovered damage to a coffee table drawer, a chest of drawers, moulding around a door, the shower wheels, radiators, a door handle, a rug and two mattresses.
- (xxii) The damage to the coffee table drawer, the chest of drawers, the moulding around the door and the radiators was attributable to the Applicants.
- (xxiii) The Respondent, her daughter and a friend cleaned the Property.
- (xxiv) The Respondent retained the tenancy deposit paid by the Applicants.
- (xxv) The Applicants are responsible for cleaning costs in the sum of £285.

- (xxvi) The Applicants are not liable for the solicitor's fee for preparation of the tenancy agreement.
- (xxvii) The Respondent is not entitled to claim rent for the full month of October 2021.
- (xxviii) In terms of the tenancy agreement between the parties, and the relevant legislation, 48 hours ought to have been factored into the notice period. The Respondent is entitled to three days' rent from 1<sup>st</sup> to 3<sup>rd</sup> October 2021.
- (xxix) The Respondent was entitled to retain £915.45 in respect of the tenancy deposit.
- (xxx) The Applicants are entitled to the return of £3284.55 of the tenancy deposit.

## **Reasons for Decision**

### **Notice given by Applicants**

47. The Respondent claimed she was entitled to retain the sum of £2683 of the deposit to cover the rent for the month of October 2021 as the Applicants had not given her correct notice to end the tenancy. No legal justification was put forward by the Respondent for her position in terms of retaining an extra month's rent. If, indeed, she believed the tenancy had not come to an end as a result of the Applicants giving notice and leaving, it was not clear why she entered the Property on 1<sup>st</sup> October 2021, and why she considered the tenancy to be at an end at the end of October 2021.
48. The Tribunal considered the terms of clause 4 of the tenancy agreement, and accepted the Respondent's position that an extra 48 hours ought to have been factored into the calculation when giving notice. It is clear that this clause applies to any electronic or recorded delivery communication for both parties and not just for the landlord. The Tribunal also took account of section 49(1)(c) of the 2016 Act, which provides that the notice must state as the day on which the tenancy is to end a day that is after the last day of the minimum notice period. The minimum notice period, if no other agreement is reached by the parties, in terms of section 49(2) of the 2016 Act, is 28 days. There is no provision in the 2016 Act for an extra 48 hours to be factored into the tenants' notice. This means that the rules set out in section 26 of the Interpretation and Legislative Reform (Scotland) (Act) 2010 ("the 2010 Act") apply. Section 26(6) of the 2010 Act provides that, when using electronic service, the document is to be taken to have been received 48 hours after it is sent. Accordingly, taking into account that notice was given by the last of the Applicants on 2<sup>nd</sup> September 2021, the end date of the tenancy ought to have been 3<sup>rd</sup> October 2021. The Respondent was, therefore, entitled to retain the sum of £264.63 (3 days at £88.21 per day).

### **Solicitor's Fee**

49. The Tribunal found that the Respondent was not entitled to retain the sum of £360 from the deposit in respect of this cost, in terms of section 82 of the Rent (Scotland) Act 1984. A landlord is not entitled to charge a tenant for preparing a lease. While the Tribunal accepted that the actions of the Applicants in terminating the tenancy agreement so soon after its commencement was galling for the Respondent, they were perfectly entitled, in terms of the tenancy agreement, to do so.

### **Rent Arrears**

50. The Tribunal found that the Respondent was entitled to retain the sum of £183.33 of the tenancy deposit in respect of rent arrears. The Applicants were bound to pay the full rent for the month of September 2021, and until the tenancy ended, notwithstanding that one Applicant left early.

### **Cleaning**

51. The Tribunal took into account the photographs lodged by both parties. It was clear from the Applicants' photographs and video evidence that tidying and cleaning of the Property had been carried out by the Applicants before the tenancy ended. However, it was also clear that a degree of further cleaning was required on the part of the Respondent. The Respondent's photographs indicated a level of dust, grime, rubbish, and personal effects remaining despite the efforts of the Applicants.
52. The Tribunal found that the Respondent was entitled to retain the sum of £285 in respect of cleaning the Property. The Tribunal was not persuaded that the state of the Property at the end of the tenancy necessitated 38 hours of cleaning. The Tribunal accepted the sum of £15 per hour was a reasonable sum, and considered that the cleaning could have been carried out in half the time claimed. The Respondent provided no evidence to substantiate her claim of the state of the Property at check-in, but neither did the Applicants complain in their check-in report of uncleanliness. The Tribunal considered the Respondent ought to have contacted all the Applicants to inform them of her dissatisfaction with the state of the Property at the end of the tenancy, and to give them an opportunity to rectify matters, rather than rely on comments made by two of the Applicants. Equally, the two Applicants ought to have passed on the Respondent's concerns to the other Applicants, at which time they could have contacted the Respondent to attempt to reach a satisfactory conclusion for both parties. The Tribunal considered there was a level of unfairness in the fact that a different standard of check-out inspection was afforded to the two tenants who left at the end of the first tenancy, when the Respondent failed to check the communal areas, and returned their deposits in full. A full inspection ought to have been carried out at that time. The Tribunal also noted that neither checklist document mentioned the need to pull out appliances and clean behind them at check-out.

## **Damage**

53. The Tribunal considered that the Respondent was entitled to retain the sum of £180.03 in respect of damage to the Property and items. The Tribunal was not convinced that the mattress that allegedly had a wet cover required to be replaced. There was no evidence that the mattress would not have dried out and been able to be used. The Tribunal made no allowance for the mattress. The Tribunal allowed the Respondent to retain the sum of £120 for reinstatement of the radiators, which had become detached during the tenancy. The Tribunal was not persuaded that the Applicants should be responsible for paying for the fitting of replacement shower door wheels, as this ought to have been considered as fair wear and tear. The Tribunal allowed the Respondent to retain the sum of £25 for repairs to the chest of drawers and £12.50 for the door moulding, taking into account the Applicants' evidence that these could have occurred during the tenancy, and that they were not noted on the Applicants' check-in report. The Tribunal allowed the Respondent to retain the sum of £22.80 for repair to the coffee table drawer, noting that this was not mentioned on the Applicants' check-in report, suggesting it was not present at that time. The Tribunal made no allowance for the door handle, second mattress and rug. The Tribunal accepted the Applicants' evidence that the door handle had become loose, but had not been removed before the Applicants left. The Tribunal also took into account the Respondent's evidence that the second mattress was old and required to be replaced, and the rug was cleaned and was not replaced.

54. The Tribunal, therefore, found that the Respondent was entitled to retain the sum of £912.99 of the tenancy deposit. The Applicants are, therefore, entitled to an order for payment in the sum of £3,287.01.

## **Decision**

55. An order for payment is granted in favour of the Applicants in the sum of £3287.01.

## **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.**

# H Forbes

Legal Member/Chair

7<sup>th</sup> March 2023  
Date