



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/22/0622

Re: Property at 45 Oldmill Road, Aberdeen, AB11 6EG (“the Property”)

Parties:

Mrs Linda Leung, Kenny Leung, David Grierson, 98 Lancefield Quay, Flat 11/1, Glasgow, G3 8JN; 98 Lancefield Quay, Flat 11/1, Glasgow, G3 8JN; 98 Lancefield Quay, Flat 11/1, Glasgow, G38JN (“the Applicants”)

Brighter Morn Enterprises Ltd, 431 Flat B Great Northern Road, Aberdeen, AB24 2EU (“the Respondent”)

Tribunal Members:

Sarah O'Neill (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the application for a payment order.

Background

1. By application received on 2 March 2022, the applicants sought a payment order in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicants stated in their application that they were seeking an order for payment of £2000 to cover loss of personal items which had not been returned to them by the respondent, who was their former landlord, following the alleged wrongful termination of their tenancy. The application stated that the items held by the respondent were camera equipment, personal clothing

items worth £600 from Next, GHD hair straighteners worth £250 and “leather goods, handbag and wallet”. They also sought a further £1000 for stress put on a disabled man (Mr Grierson) who had recently recovered from bilateral pneumonia.

3. The application form referred to receipts for the camera and a summary of goods from Next Directory as being attached, but these were not in fact included with the application form. The tribunal administration wrote to the applicants on 4 March and again on 5 April 2022, asking them to provide evidence to support the application and a copy of their tenancy agreement.
4. On 10 April 2022, an email was received from Mrs Leung on behalf of the applicants in response. In the email, Mrs Leung stated that no proof of purchase for the GHD straighteners could be found, and that no proof of purchase for the leather handbag and coat could be found but she had contacted the bank which would supply bank statements for purchases made in Italy. Attached to the email were:
 - i. an order confirmation from Amazon relating to an outdoor security camera purchased by Mr Leung on 12 August 2021
 - ii. copy email exchange between Mrs Leung and the respondent dated 16 February 2021, regarding the delivery of the applicants’ personal items
 - iii. copy invoice dated 23 February 2022 from D & D Properties, Aberdeen for £494.95 in respect of removal and storage of items from the property
5. Further emails were received from Mrs Leung on 11 and 12 April 2022. A further letter was sent to the applicants on 27 April 2022, asking them to provide further information, including a copy of the tenancy agreement and a list of the items, amount for each item and total sum claimed. An email was received from Mrs Leung in response on 2 May 2022 attaching a copy of the tenancy agreement and stating that a list of items and their value would be included in her next email. A lengthy list of items with the claimed value of each, but no overall total, was received via a further email from Mrs Leung on 3 May 2022.
6. The application was accepted on 4 May 2022. On the same date, a legal member of the tribunal issued a direction to the applicants, requiring them to provide:
 - i. Vouching for the items claimed evidencing their value
 - ii. A replacement list showing not just the individual items but also the total amount claimed
 - iii. any medical information which the applicants wished to rely on.
7. The application papers, together with notice of the case management discussion (CMD) scheduled for 16 June 2022, were served on the

respondent by sheriff officer on behalf of the tribunal on 11 May 2022. Written representations were invited by 1 June 2022.

8. Written representations were received from the respondent by email on 24 May and 9 June 2022 in relation to both applications. Numerous written representations were received from the applicants in relation to the present application on 23, 24, 25, 26, 27 and 31 May 2022.
9. Several emails were received from Mrs Leung on 26 May 2022 relating to items which she said had been left in the property and had not been returned to her. These included clothing, various items of make-up, a mirror, and various items of soft furnishings, bedding, towels and plants. Evidence of online orders having been placed for some of these items was attached. Several emails were also received from Mr Grierson on 26 and 27 May 2022, together with evidence of hospital appointments for dates in August 2021 and a death certificate for one of his brothers.
10. The applicants also made a separate application (reference no: FTS/HPC/PR/22/0380) under rule 110 of the 2017 rules for a wrongful termination order without an eviction order under section 58 of the Private Housing (Tenancies) Scotland Act 2016.
11. The two applications against the respondent were conjoined and were considered together by the tribunal. A separate decision in the application for a wrongful termination order is issued alongside this decision.

The case management discussion

12. A case management discussion (CMD) was held by remote teleconference call on 16 June 2022. All three applicants were present on the teleconference call and represented themselves. Mrs Leung was the primary spokesperson for the applicants. The respondent was represented by Mr David Dadon, a director of the company, and his secretary, Miss Susan Ritchie.
13. The tribunal heard evidence from both parties and the parties agreed a number of facts. There had been a dispute over an invoice sent to the applicants by the respondent for over £400 for the storage of their items in a "storage facility". Mr Dadon said at the CMD that the applicants could collect their belongings without having to pay a storage fee, in order to bring matters to an end.
14. Having considered all of the evidence before it, the tribunal did not consider that it was able to make sufficient findings to determine the application at the CMD. It took the view that it may be contrary to the interests of the parties to make a decision without a hearing. It also wished to hear further evidence

from both parties in relation to both the present application and the conjoined application for a wrongful termination order.

15. The tribunal also noted that the applicants now had the opportunity to collect their belongings and establish what, if anything, was missing. At the hearing, the tribunal would consider their claim in respect of any items which had not been returned to them, together with any claim in respect of compensation for stress caused as a result of the alleged wrongful termination of their tenancy.
16. The tribunal also issued a direction to the parties on 22 June 2022, seeking further information from them by 26 July 2022. The applicants were required to provide:
 - a) After they had collected their possessions from the storage facility, a single list of any remaining items which they wished to claim compensation for. This list should show each item numbered and shown separately, together with the total value of each item, with an overall total shown at the end of the list. The applicants should also provide a numbered receipt for each item, making clear which of the numbered items claimed for each receipt relates to.
 - b) Any further evidence which they may wish to submit to support their claim for stress caused to them as a result of the alleged wrongful termination of their tenancy.
17. Both parties were also invited to submit any further written representations or documents which they wished the tribunal to consider and to provide details of any witnesses they wished to call to give evidence at the hearing.
18. Further written representations were received from the respondent on 25 July 2022. Further written representations were received from the applicants on 29 June and 3, 24, 25, 28 and 29 July 2022.

The hearing

19. A hearing was held by teleconference in relation to both applications on 9 August 2022. The applicants were all present on the teleconference call and represented themselves. Mrs Leung was again the primary spokesperson for the applicants. The respondent was represented by Miss Susan Ritchie.

Preliminary issues

20. The tribunal noted that numerous written representations had been received from the parties since the CMD. Both parties confirmed that they had received all of the representations received from the other party. The tribunal noted that written representations which appeared to have been sent in

response to the tribunal's direction had been received from Mrs Leung on 28 July 2022, which was after the deadline of 26 July 2022, but more than 7 days before the hearing, as required in terms of rule 22 of the 2017 rules. Miss Ritchie indicated that she had no objection to these representations being considered by the tribunal. The tribunal decided to accept these written representations in evidence.

21. The chairperson noted that Mr Dadon was not present at the hearing. He had advised the tribunal at the CMD that he would be abroad on the date of the hearing and that Miss Ritchie would represent the respondent.

22. Both parties confirmed that they were content with the facts agreed between the parties as set out in the tribunal's note of the CMD on 16 June 2022.

The evidence

The following evidence was considered by the tribunal:

- The application form submitted by the applicants.
- Copy (unsigned) tenancy agreement between the parties in relation to the property which commenced on 4 June 2021.
- Registers Direct copy of Land Register title ABN112839.
- Copy Scottish Landlord Register registration details for the property.
- Written representations received from the applicants on 10,11, 12 April, 2,3, 24, 25, 26, 27 and 31 May, 29 June and 3, 24, 25, 28 and 29 July 2022.
- Written representations received from the respondent by email on 24 May, 9 June and 22 July 2022.
- The oral representations of the parties at the CMD and at the hearing.

Findings in fact

23. The tribunal made the following findings in fact:

- i. There was a private residential tenancy between the parties in relation to the property, which commenced on 4 June 2021.
- ii. The respondent is the owner and registered landlord of the property.
- iii. In October 2021, the applicants decided to travel to the USA for three months. Two of Mr Grierson's brothers had recently died within a short period of time, and he therefore needed to return home. Mr and Mrs Leung decided to accompany Mr Grierson to provide support to him.
- iv. The applicants informed Mr Dadon of their travel plans and said that they intended to come back after around three months, in February / March 2022.
- v. The parties reached a written agreement as set out in an email from Mrs Leung and a reply from Mr Dadon, both dated 25 October 2021,

- regarding the property. This provided that the applicants would be overseas from 31 October 2021 until February/March 2022; that during this period of absence it was understood that the tenancy had not been abandoned; that Mr Dadon was fully aware of the situation; and that the rent payable during that period would be £325 per month.
- vi. In late October 2021, Mr Dadon contacted the applicants to say that they owed rent arrears in relation to the property.
 - vii. The applicants sent a number of emails to the respondent between 26 October and 1 November 2021, offering to give up the tenancy if Mr Dadon agreed to waive the notice period, cancel any debts owed by them and return their deposit. Several of the emails also referred to making an application to the First-tier Tribunal if Mr Dadon did not agree to this proposal.
 - viii. The applicants left the property to travel to the USA on 4 November 2021.
 - ix. The applicants left some of their belongings in the property.
 - x. The applicants had installed their own security camera at the property, which was later removed by the respondent as required by the property factor.
 - xi. The respondent served a notice to leave (NTL) on the applicants by email on 4 November 2021.
 - xii. The NTL cited ground 4 (landlord intends to live in the let property). It stated in part 3: *"I am separating from my partner and have to leave her house. I will be homeless therefore I need this flat to live in."*
 - xiii. The NTL was signed by Mr Dadon and stated that an application would not be submitted to the tribunal for an eviction order before 7 February 2022.
 - xiv. Following receipt of the NTL, the applicants sent a number of emails to the respondent expressing their views that the ground stated was weak and that any eviction application would be refused. They again referred to their previous offer to give up the tenancy in return for the refund of their deposit and stated that if this was not agreed to, they would make an application to the First-tier Tribunal.
 - xv. Mr and Mrs Leung later travelled from the USA to Italy, while Mr Grierson remained in the USA.
 - xvi. Atholl Chartered Surveyors made a payment of £375 to the applicants on behalf of the respondent on 26 November 2021.
 - xvii. Mr and Mrs Leung couriered their keys to the property from Italy to the respondent on or around 26 November 2021.
 - xviii. Mr and Mrs Leung each sent an email to the respondent on 26 November 2021 and 1 December 2021 respectively stating that they were terminating their tenancy of the property and owed no further money to the respondent. Neither email stated the date on which the tenancy was to end.
 - xix. Mr Grierson was in further email correspondence with the respondent for some time from 28 November 2021 onwards stating that he would end

his tenancy if a further £375 was paid to the applicants. He sent an email to the respondent on 9 December 2021 stating that he was terminating his tenancy of the property and owed no further money to the respondent. The email did not state the date on which his tenancy was to end.

- xx. Neither Mr or Mrs Leung referred to their personal belongings in their email terminating their tenancy of the property. Mr Grierson stated in his email of 9 December 2021 terminating the tenancy that: *“Personal belongings will be collected in the new year.”*
- xxi. The tenancy agreement between the parties stated at paragraph 23 (at the foot of page 15): *“The Tenant agrees to remove all of his or her belongings when the Tenancy ends. The Tenant’s belongings may include personal effects, foodstuffs and consumables, belongings and any other contents brought in to the Let Property by the Tenant.”*
- xxii. The property was advertised for rental on the Open Rent website and had been taken off the market by 14 December 2021.
- xxiii. The respondent entered into a new tenancy agreement for the property with new tenants commencing on 30 December 2021.
- xxiv. The applicants returned to Scotland on or around 2 February 2022.
- xxv. The applicants collected three boxes of personal belongings taken from the property from a garage at 106 Stell Street, Aberdeen on or around 1 July 2022.

The applicants’ submissions

24. At the CMD, Mrs Leung said that when the applicants left to travel to the USA on 4 November 2021, they had every intention of coming back and the respondent knew this. Before they left, she had taken a video of every room in the property showing all of the items they had left there. While they were still away, Mr Dadon had said that they could come and collect their items. She had sent emails to the respondent asking if she could arrange for a friend to collect the items. Ms Rona Lawrie, an employee of the respondent, had said that she could do so, but that Mr Dadon, who was the only one with the key to the storage facility where they were being stored, was currently abroad. This had been over the Christmas / New Year period. She said that Mr Dadon had blocked WhatsApp messages from her. He had refused to return the items to the applicants unless they provided their new address. They had refused to do this as they said they were technically homeless.

25. In around February 2022, Mrs Leung had again asked if she could collect the items and had received an email saying that she could do so. In order to do so, however, she would need to pay a £400 fee to the respondent’s “storage partner”, which was storing the applicants’ possessions.

26. Mrs Leung believed that Mr Dadon owned the storage facility, as he was the only person with a key. She had said that she would come and collect the

items. Around 14/15 May 2022, she received a phone call from Mr Dadon out of the blue saying that he had the items and was at the front door. However, he was at an Airbnb property which the applicants had previously stayed at but were no longer living in.

27. At the hearing, Mrs Leung said that shortly after the CMD the applicants had all become ill with covid-19 and had therefore not been able to collect their items straight away. They had finally collected their belongings from the "storage facility" at 106 Stell Road, Aberdeen on 1 July 2022. The applicants had been led to believe by the respondent that their belongings were being held in a genuine storage space, which was the reason they had initially been sent an invoice for over £400. However, the items had in fact been held in three cardboard boxes in a garage which the applicants believed was owned by Mr Dadon.
28. When the applicants collected their belongings, they discovered that the cardboard boxes were soggy and it appeared that the items had been thrown into the boxes and taped up. Most of the items were musky and smelly and could not be saved. The only items which could be salvaged were the camera and a six-foot long mirror (which had not been included in the original application, but Mrs Leung had later referred to in an email to the tribunal dated 29 May 2022).
29. The tribunal chairperson noted that in an email of 24 July 2022, Mrs Leung had provided a list of 35 items which she said had been left at the property and had either not been returned or were ruined. She had also provided receipts/evidence of online orders for five of the items but had stated that she had not kept receipts for the remaining 30 items. On 27 July 2022, she had also forwarded an email from Next listing all of her clothing orders from them during 2021, totalling £767.50.
30. The overall total listed for the various items set out in the email of 24 July was £4097.12. The items listed included various items of clothing; electrical hair styling products; cosmetics; household furnishings; and kitchen equipment. Mrs Leung said that the only items which had been left in the property which belonged to the other applicants were a wifi dongle and the security camera (which had been returned), both of which belonged to Mr Leung. The other applicants had left no clothes or other items in the property. All of the other items listed were hers. The other two applicants had taken all of their belongings with them to the USA.
31. The chairperson noted that the original application had set out a much shorter list of items, which were stated to have a value of £2000. Mrs Leung said that these were the only items she could remember at the time and that this were an approximate figure. Once she had gone through all of the items which had

been returned to the applicants, she had been able to identify what was and was not there.

32. The tribunal went through each of the 35 items in turn at the hearing, asking Mrs Leung for further information about each of these, as set out below.

1. Clothing and footwear

33. Mrs Leung had provided an online order confirmation dated 11 October 2021 from JD Sports for £105. No further written evidence of the items purchased had been provided. Mrs Leung said that the order comprised a sweatshirt and leggings which she had purchased before she went to the USA and had left in the property. These had not been in the storage boxes. She also wished to claim £125 for a black wool coat, for which she had not provided a receipt, as she had not kept this. She said that the coat was in the storage boxes but had been ruined and the dry cleaners had said it was not salvageable.

34. The list of 24 July 2022 also included a dress, top, trousers and jeans from Next with a total claimed value of £205. Mrs Leung said that these items had not been in the storage boxes. The tribunal chairperson asked whether these items were included in the list of 2021 orders provided by Next. Mrs Leung said that she thought these were not part of that list but could not be sure. There had only been a couple of t-shirts and a blouse in the boxes. These had smelled and she had thrown them out without further examining them. The £600 worth of clothes from Next claimed for in the original application had been an estimate. She said that she had not taken any of the Next clothes set out in the 2021 list of orders with her to the USA.

35. Mrs Leung had also included a pair of boots from Office Shoes in her list of 24 July with a value of £95. She had produced a confirmation of an online order for this amount dated 13 October 2021. She said that these had been left at the property and had not been in the storage boxes. She also included in her list an Italian leather tote handbag with a claimed value of £180. She had not taken this with her to the USA and it was not included in the boxes.

2. Cosmetics

36. Mrs Leung told the tribunal that she was a qualified make-up artist and had bought a number of expensive cosmetic products with a view to using these to make-up her friends. In her email of 24 July, she stated that she had provided receipts for two make-up palettes with respective purchase costs of £27.20 and £36.80, but these were not in fact received by the tribunal. She also stated that there were a further four sets of new and unopened make up which were not in the storage boxes as follows: 1) Estee Lauder make up - £200; 2) Estee Lauder skincare -£140; 3) Benefit cosmetics- £150; 4) Dior

Backstage cosmetics - £300. Mrs Leung had not produced receipts for any of these items, saying that she had not kept these.

3. *Electrical hair styling products*

37. Mrs Leung had included in the list of 24 July two GHD products: 1) hair straighteners which were said to have a value of £250 and 2) a hairdryer said to be worth £150. She had not produced receipts for either of these items, saying she had not kept these. She had left both items in the property, having taken cheaper versions for travel. She had bought the hair straighteners herself but thought -although she couldn't remember- that the hairdryer had been a birthday gift. She also claimed for a "Blowbrush" hairdryer and hot air styler and had produced confirmation of an online order dated 3 October 2021 at a cost of £56.95.

4. *Household furnishings*

38. Mrs Leung had included in the list of 24 July a number of soft furnishings which she said the applicants had bought from Marks and Spencer for the property while they were living there. These included six cushions at a cost of £20 each which she said had been bought specifically for the sofa in the property. Also included were bedding for both bedrooms at a total value of £120 and six bathroom towels at a claimed cost of £40 each. Finally, there were two artificial plants with an alleged value of £100. Mrs Leung said that she had noticed that one of these was still in the property when she had visited it after the new tenants had moved in. This had been returned to her but was damaged and bent. No receipts or other proof of purchase was produced for these items by the applicants.

5. *Kitchen/electrical equipment*

39. Mrs Leung had included in her list of 24 July a Lakeland food processor, which she said had a value of £140 and had not been in the storage boxes. She also included a Next blender with a value of £62. She said that this had been returned to her and was undamaged, but she had thrown it out due to the smell. She also included a Lakeland slow cooker with an alleged value of £150, which she said had not been returned to her. She had also included a wifi dongle with a claimed value of £45 which belonged to Mr Leung. Finally, she included a canteen of silver cutlery with a value of £100, which she said had not been returned. The applicants had not produced receipts for any of these items.

40. When asked to confirm the sum which she was seeking an order for in

respect of all the belongings listed, Mrs Leung said that she would be happy to take the £2000 the applicants had originally claimed for.

Claim in respect of stress caused to Mr Grierson

41. Mrs Leung confirmed that the applicants also wished to claim the sum of £1000 in compensation for stress caused to Mr Grierson as a result of the respondent's actions and the wrongful termination of the applicants' tenancy.
42. She said that Mr Grierson is a retired veteran suffering from bipolar disorder and PTSD and was already receiving psychiatric care prior to the issues with the tenancy. He also has asthma and had been recovering from bilateral pneumonia. He had then lost two brothers within a very short time, and the whole situation with the tenancy and the alleged wrongful termination had escalated his mental health issues again.
43. Mr Grierson told the tribunal that one of his brothers had drowned and 26 days later another brother was found dead. He said that the respondent was aware of his situation but did not care. His health had already been in a fragile state before the issues with the tenancy began. His psychiatrist had said she would speak to the tribunal about the claim for stress. He had provided evidence to support the claim, namely a death certificate and a letter from the mental health team regarding an appointment for psychiatric evaluation. He said that he was very afraid of being made homeless and Mr Dadon talking about making the applicants homeless and the thought of possibly having to return to Scotland while grieving had exacerbated his stress.

The respondent's submissions

44. At the CMD, Mr Dadon told the tribunal that there were three full boxes of items belonging to the applicants to be collected. He said that they could pick these up any day from a garage at 106 Stell Road, Aberdeen and that he would instruct the "storage facility" to release the items at no charge.
45. Miss Ritchie told the tribunal at the hearing that the applicants' items had initially been stored in a private home before they were stored in the garage. She said that the respondent had been trying to return the applicants' belongings since before the CMD. Mr Dadon had tried to return them to an Airbnb property where he believed they were living, on around 14/15 May 2022. They had been in the garage from that night onwards, a much shorter period than the seven months claimed by the applicants, until they were picked up by the applicants. This was challenged by Mrs Leung, who pointed out that the respondent had referred to the items being held in a storage

facility in emails sent to the applicant in February 2022. Miss Ritchie then stated that the boxes were held in the office of the garage, but that she could not confirm the dates when this began. She confirmed that she had not begun working for the respondent until late February 2022.

46. Miss Ritchie alleged that the list of items claimed for was made up and did not reflect what the applicants had actually left behind. She expressed doubts that anyone would leave behind all of the expensive make-up which Mrs Leung claimed to have left in the property. She said that the property was fully furnished with good quality furnishings, cooking equipment and bedding provided. The applicants had come from abroad before moving into the property and Mr Dadon had bought them sheets and bedding. She confirmed when asked by the tribunal that no outgoing inventory had been done at the end of the applicants' tenancy.

47. Miss Ritchie said that everything the applicants had left behind, other than the mirror and security camera, had fitted into three boxes. She believed the applicants were trying to gain from the situation financially as they had allegedly done in the past. It was unclear from the applicant's submissions exactly what had not been returned to them. While she confirmed that no inventory of what was in the boxes had been prepared and that she could not therefore say exactly what items were in the boxes, she said that Mr Dadon had put them in the boxes himself and there was nothing of real value there.

48. In relation to the claim for compensation for stress caused to Mr Grierson, Miss Ritchie said that the applicants had not provided any medical evidence to support this. She said that she had nothing more to add to the evidence already provided to the tribunal and that the respondent wished the tribunal to make a decision on the application on the balance of probabilities.

Summary of the issues

49. The issues to be determined were:

1. Whether the applicants were entitled to compensation for loss of their belongings which were retained by the respondent following the termination of their tenancy.
2. If the tribunal finds that the applicants were so entitled, what level of compensation should be awarded.
3. Whether the applicants were entitled to an award in relation to their claim for stress caused to them.
4. If the tribunal finds that the applicants were so entitled, what level of compensation should be awarded.

Reasons for the decision

50. The tribunal notes that the main basis for the application appeared to be that the respondent had wrongfully terminated the tenancy and was therefore responsible for keeping the applicants' personal belongings safe. The tribunal did not find in relation to the application for a wrongful termination order that the applicants were misled into giving up the tenancy.
51. Firstly, the tribunal considered the applicants' claim for compensation in respect of personal items belonging to them which they alleged had been left in the property and had not been returned to them. The tribunal noted that there were a number of inconsistencies between the number, description and claimed value of personal items set out in the original application form, the list provided on 3 May 2022 and those later claimed by the applicants. It also noted that all of the personal items claimed for appeared to belong to Mrs Leung, other than the dongle and security camera.
52. The applicants did not produce a great deal of evidence to support their claim. No receipts or other proof of purchase were provided for the vast majority of the items claimed for. Even for those items for which proof of purchase was provided, there was no clear evidence beyond the oral evidence of the applicants that these items had been left behind the property and/or that they had not been returned to them. Mrs Leung made numerous references to a video which she claimed to have taken of every room in the property before they had left to travel to the USA, which showed the items they had left in the property. This video was not submitted to the tribunal, however, despite the fact that the applicants had requested permission to submit other video evidence in connection with the application for a wrongful termination order, which had been granted.
53. No other evidence, such as photographs, had been submitted by the applicants to show the items which had been held in the boxes or to demonstrate that they had been ruined in some way. According to the applicants, some of the items had been thrown away without further examination on the basis that they smelled. While the evidence submitted by the respondent to rebut the applicant's claims was equally lacking, this application was made by the applicants and the onus was therefore on them to prove their claim on the balance of probabilities.
54. The tribunal notes that the tenancy agreement between the parties stated that the applicants agreed to remove all of their belongings at the end of the tenancy. The applicants told the tribunal that they believed their tenancy had ended on 10 December 2021 (although the tribunal considers that the tenancy likely ended later than this, for the reasons set out in its decision on the wrongful termination order application). There was, however, almost no

mention of their personal belongings (aside from the security camera) or what would happen to these at the end of their tenancy in any of the applicants' numerous emails to the respondent seeking to end the tenancy in exchange for the return of their deposit and the cancellation of their debts. In an email of 12 November 2022 where she reiterated the applicants' "offer" to give up the tenancy, Mrs Leung stated that the applicants would return for their personal items, including Mr Leung's camera, in February, but made no specific reference to any other items.

55. Neither was there any mention of the applicants' belongings or what would happen to them (other than a general reference to them in Mr Grierson's email of 9 December) in the emails in which they stated that they were ending their tenancy. There was no correspondence before the tribunal in which the applicants asked the respondent before ending their tenancy whether their belongings would be kept in a safe place, or mentioned any specific items, aside from the camera and Mrs Leung's driving licence. This suggests that the applicants were not greatly concerned about their belongings, contrary to what might be expected had they left £4000 worth of items in the property.
56. Mrs Leung also indicated to the tribunal that she was willing to accept an order for the original figure claimed of £2000 rather than the £4097 which she had later claimed was due to the applicants. This also suggests to the tribunal that the applicants may not in fact have left over £4000 worth of items in the property.
57. The tribunal also found it difficult to accept that neither Mr Leung or Mr Grierson had left any items in the property when they said they had always planned to come back to the property, and when Mrs Leung seemed to have left so many items behind.
58. The tribunal does not dispute that the applicants may have left some personal belongings behind at the property. It was not persuaded, however, on the basis of the evidence before it that the items claimed for in the application had all been left behind in the property and that none of them had been returned to the applicants either at all or in a reasonable or usable state.
59. The tribunal then considered the claim for £1000 for stress caused to Mr Grierson by the respondent's behaviour and alleged wrongful termination of the tenancy. The tribunal accepts that things must have been very stressful for Mr Grierson around the time when the applicants went to the USA and the NTL was sent. He clearly had both mental and physical health issues and had suffered two bereavements within a short space of time.
60. On 25 May 2022, Mr Grierson submitted to the tribunal a death certificate for one of his brothers dated 16 August 2021, together with a letter dated 30

August 2021 regarding a mental health telephone appointment with a doctor at Royal Cornhill hospital, Aberdeen and two letters dated 7 and 22 August 2021 regarding an appointment with a doctor in respiratory medicine at Aberdeen Royal Infirmary. These letters and death certificate provided evidence that he was suffering from both physical and mental health issues and had recently been bereaved at around that time. All of these events occurred before Mr Dadon began pursuing the applicants for rent arrears and the NTL was sent. The applicants had not however produced any medical or other evidence, beyond Mr Grierson's oral evidence, to support their claim that the alleged wrongful termination had exacerbated his condition and would justify a claim for stress caused to him.

61. The tribunal determined in relation to the conjoined application for a wrongful termination order that the applicants were not misled into giving up their tenancy. There were emails from Mr Grierson to the respondent both before and after the NTL was received offering to give up the tenancy in exchange for the return of the tenancy deposit and cancellation of any debts owed by the applicants. There were also emails from both Mr Grierson and Mrs Leung stating that Mr Grierson had found another place to live and no longer needed to live in the property (although this other property appears to have later fallen through). These emails did not fit with the picture painted by the applicants of someone who was terrified of being made homeless.

62. As stated in its decision on the conjoined wrongful termination order application, the tribunal considers that the respondent did not behave appropriately as a landlord and may in fact have acted unlawfully. However, the tribunal was not persuaded that there was sufficient evidence before it to support the applicants' claim for compensation. It therefore refuses the claim made in the application for compensation in respect of stress caused to Mr Grierson.


Decision

The tribunal is not persuaded on the basis of the evidence before it that the applicants are entitled to compensation for the various items claimed for in the application. The tribunal therefore refuses the application for a payment order.

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.



Legal Member/Chair

25 August 2022
Date