



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/22/3101

Re: Property at 0/2 101 Yorkhill Street, Glasgow, G3 8NS (“the Property”)

Parties:

Mr Philip Graemer, 2/1 3 Dowanside Road, Glasgow, Lanarkshire, G12 9YB (“the Applicant”)

Mr Gavin Lindsay, 0/2 101 Yorkhill Street, Glasgow, Lanarkshire, G3 8NS (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Sandra Brydon (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay to the Applicant the sum of Five Hundred and Forty Pounds (£540.00) only.

The decision of the Tribunal was unanimous.

Background

1.This application in terms of Rule 111 of the Tribunal rules of procedure for a payment order was first lodged with the tribunal on 28 August 2022.A related application for sanction on a landlord for alleged failure to comply with the duties on a landlord in terms of the Tenancy Deposit Schemes(Scotland)Regulations 2011 was also lodged with the Tribunal with reference number PR/22/3099.

2.The application was accepted by the Tribunal on 5th September 2022 and a case management discussion was fixed for both applications for 18th November 2022 at 10am.

Case Management Discussions

3. At the case management discussion on 18th November 2022 both the Applicant and Respondent appeared and represented themselves.

4. The Applicant was seeking return of his deposit of £600 which he had paid when he rented the property from the Respondent in January 2022.

5. The Tribunal initially had sight of the application, a tenancy agreement, bank statements and text messages. For the hearing in the matter the Tribunal also has sight of photographs of a bedroom lodged by the Applicant.

6. The Respondent did not dispute that he had received a deposit from the Applicant in the sum of £600. He had rented out his property to two tenants with two separate tenancy agreements when he had to move in with family for 5 months, with monthly rent payable by the Applicant of £600. He said that he was not a landlord but he had simply rented out his property to tenants whilst he had to stay with family.

Respondent's Position

7. The Respondent indicated that he had not returned the deposit due to the condition of the property when the Applicant left in June 2022.

8. This was a two-bedroom property and the Applicant, and the other tenant had a bedroom each and use of the whole property which included a kitchen, living room and bathroom. The tenancy agreement set out pre-existing damage at the property which would not be covered by the deposit and damages which would attract deductions from the deposit.

9. The Respondent complained that the Applicant had left his room neither hoovered or dusted and a china cup had been used as a flowerpot. A drinking glass had also been used as a flowerpot. He said he threw both of these out.

10. The Respondent complained of a bowl which had been used for food which was under a cabinet and was mouldy. He believed it had been there a while.

11. The Respondent complained that he had required to dispose of a used condom, cardboard, socks, and rubbish under the bed. He said dust and grime was ingrained in the skirting board in the bedroom.

12. He said the living room had not been hoovered or mopped and had numerous brown stains on the laminate flooring. The Respondent said he had cleaned these out and this had not been difficult but what had annoyed him the most was he said the lack of effort that had been put in.

13. The Respondent said that almost every cushion and footstool had food or drink staining. He had cleaned these up. He said it was now possible to see where he had used Vanish on these items. He had steam cleaned too.

14. In the kitchen the Respondent described the condition as laughable as he said a bag of flour had been thrown across the kitchen and in the inside of a food cupboard.

There was flour all over a shelf, a worktop, and the kettle. There was oil staining on the wall.

15.The Respondent said he found remnants of pasta and threw out half a bin bag of things. He said it appeared that the Applicant was not bothered. The worktop had not been wiped and all around the handle on the fridge door was caked in foodstuff and grime. He said the floor had not been mopped or swept. Condiments had been spilled out and left.

16.In the bathroom the Respondent said he took almost 4 hours to clean the bathtub which he said had not been cleaned and all around the bathtub was orange. In the toilet he said there were urine marks trailing down which he said was disgusting. He said there was hair all over a shelf and the shower head and shower were “ thick “ with orange muck.

17.The Respondent said that his new non-stick pans were caked in burn marks and had scratches on every single one. He said he had never seen a flat given back like that. He also said that when the Applicant was leaving and taking foodstuffs, he, the Applicant, had seen something leaking and walked away.

18.The Respondent said that the other tenant had left 5 days after the Applicant and he had cleaned, and he had done a thorough cleaning. The Respondent said he felt that the flour in the food cabinet was down to the Applicant as this was where he kept his things, and the other tenant had a separate shelf. He said that the issues with the flooring he blamed on both the Respondent and the other tenant. He had taken two days to clean the property.

19.The Respondent was annoyed that the Applicant did not acknowledge the state of the place and said that he could have got a cleaner. He was aware that the Applicant had sustained an injury shortly before he was due to move out but felt that he could have done things in the 2 days between suffering the injury and moving out. The Respondent said that he had to buy cleaning supplies of around £50.He said he had to borrow a steam cleaner and had cleaned after the Applicant had moved out.

20.The Respondent had returned the other tenant’s deposit in full as he had said it was the Applicant who was responsible for the issues and was less clean than him.

21.The Respondent accepted that he had not responded to the texts from the Applicant regarding the deposit. He said he had gone to respond then thought better of it.

Applicant’s Position

22.The Applicant said he had spent most of his time when in the flat in his bedroom which he had left clean and tidy. He said the kitchen and living room were dirty but not damaged. He said he had had a slight accident 2 days before he was due to move out and could not move his knee. He said that the kitchen and living areas were communal. The tenancy agreement contained provision for specific damages and a deduction could be made for those.

23.The Applicant said he had photos of his room. He said there might have been oil on a wall and a floor may have needed to be scrubbed but this was an effort required

of both he and the other tenant. He had been injured and the other tenant was away when he moved out.

24.The Applicant said that he did Hoover his room and might have left a pot with flowers in it, but these were fresh flowers, and he did not see a need to replace the pot. He could not say what was under the bed in his room as he could not get under the bed with his injury. He said the state of the floor was due to the use made by both he and the other tenant. The plan had been that they would move out at the same time. The Applicant had been on a bike ride with colleagues shortly before moving out and this was how he had sustained an injury two days before he was due to leave the property.

25.The Applicant said that it did not occur to him that it was necessary to have someone else clean the place and that he had no time to make arrangements for this. He said he thought there ought to be a deduction for new cushions but that anything else he did not agree. He did not accept any perceived lack of discourtesy on his part and said that the Respondent required legal grounds for what he was asking.

26.The Applicant did not agree with the suggestion that he was less clean than the other tenant and felt the cleaning time suggested was not reasonable. He said the flat was not clean when they moved in.He said that he had photographs which he could lodge.

27.The Respondent indicated that he had a video of the property and would seek to lodge this.

28.The Tribunal determined that a hearing be fixed, and this was fixed for 10th March 2023.On that date the Applicant attended but there was no appearance by or on behalf of the Respondent and it was noted that a recorded delivery letter to the Respondent giving him the date had been returned to the Tribunal. Given that it appeared that the Respondent did not know of the date the Tribunal adjourned the Hearing to a later date and the application called again on 26th May 2023.On that date there was no appearance by either party and the hearing had been intimated to the Respondent. The tribunal adjourned matters to a new hearing and issued a direction to the Applicant to require him to confirm if he was proceeding with his applications and to explain his non-attendance.

29.A new hearing was set down for 1st September 2023 at 10am and was attended by the Applicant who represented himself. The hearing had been intimated to the Respondent by Sheriff Officer, but he did not attend or contact the Tribunal and in the circumstances the Tribunal was satisfied that he had received fair notice of the Hearing and that it was appropriate to proceed in his absence.

30.At the hearing the Applicant set out his position as he had done previously and answered questions posed by the Tribunal members.

31.The Applicant explained that when he was leaving the property in June 2022, he expected that he would return the flat to the Respondent in the state that it was given to him. He thought that he would have to clean his room and that he would have to carry out a partial clean of the common areas used by him and the other occupant of

the property. He had assumed he would be assisted by the other tenant Peter as both of them had used the communal areas. He had had discussions with Peter about leaving the property but at the time that the tenancy of the Applicant had come to an end Peter was away from the property on some celebration or holiday. Peter was not present when the Applicant cleaned his room removed his things, cleaned surfaces and his share of the fridge.

32. The Applicant indicated that he had hoovered the living room. He accepted that the Respondent would have required to carry out some cleaning of the property, but he considered that the Respondent would be entitled to £50 at most for cleaning. He said that anything left in the property in relation to items or cleaning could have been dealt with in two hours. He reiterated that he suffered a knee injury in a bike accident shortly before he was due to leave the property. He pointed to the pictures he had lodged with the tribunal which he said showed that he had hoovered his room. He said that the drinking glass in his room need not have been thrown out and whilst the old cup referred to by the Respondent at the first case management discussion was tea stained he did not consider that it required to be disposed of and could have been washed.

33. The Applicant indicated that he did not know what the Respondent was meaning when he referred to a bowl under a cabinet which might have been there for some time and was mouldy. He said it was possible that something could have been in some nook or cranny and normally he would have looked everywhere but he could not do that because of his injury.

34. The Applicant was asked about items said to be under the bed in his room. He accepted that some of these could have been left by him but some might have been there at the start of the tenancy. He had been unable to look under the bed when he left due to his injury but considered that anything under the bed could simply have been disposed of quickly.

35. The Applicant was asked about the condition of the living room floor. He said he could not remember if the floor had brown stains on it but it could have been in this condition. He said that the other tenant Peter had a coffee machine which he sometimes had in the living room and that the brown stains could have been coffee stains. He said he would have had difficulty in dealing with these stains due to the ankle injury and his inability to move his knee at the time that he left the property. He did reiterate that he had hoovered the living room and again referred to the fact that this was a communal area and he should not be held solely responsible for its cleaning. He said it was mostly Peter the other tenant who sat in the living room and he mostly sat in his bedroom.

36. The Applicant accepted that there might have been flour on some surfaces in the kitchen. He said that the surfaces that were higher up and would have been difficult for him to reach. He knew that he had been baking before he had been injured. He pointed out that two people were using the kitchen and cooking. He said that the fridge had been in a bad state when he moved in, and he did not have the time to clean the whole fridge. He accepted he might have left a packet of pasta behind but said this could have been disposed of quickly.

37. When asked regarding the Respondent's position set out at the first case management discussion the applicant said he felt that the Respondent had been overly dramatic in his assessment of the requirement for cleaning. He said that when he first moved in the property was in a bad state. He said there were residue on the bathroom floor and powder in some glasses in the bathroom. He said there were orange sports already on the bathtub. He described receiving the bathroom in a not very clean state. Again, he said this was a common area and he refuted the suggestion that he was solely responsible for any cleaning required in the bathroom.

38. When asked about marks on saucepans he said he thought there may have been some burn marks on pans which were in use and these marks would be expected due to wear and tear.

39. The Applicant said he didn't recall any staining on cushions in the living room but had tried to clean the living room. As far as the Respondent requiring spending £50 on cleaning material the Applicant pointed out that he did not lodge receipts or show evidence of any damage at the property.

40. The Applicant indicated that the Respondent was entitled to do some cleaning in property when his tenancy ended. He denied the suggestion that he was not as clean as the other tenant and said that the other tenant's room was always messy. He said he regarded the other tenant as having a completely separate tenancy arrangement with the landlord. He was not aware of the terms of his tenancy, simply that it was a different tenancy. He understood that after he had moved out the landlord moved back in and the other tenant Peter remained in occupation of the other bedroom for some time afterwards. The landlord had never lived at the property during the Applicant's tenancy. The Applicant denied seeing something leaking when he left and ignoring it. He said he had simply handed keys to the landlord and had left the property relatively quickly.

41. The Applicant said it had not been certain when the landlord would return to the property. He said he understood his frustration with the flat. He said he believed the Respondent had become angry and the anger had been focused on him as he was the one who was leaving the property and he believed that the Respondent had simply decided not to return any of his deposit. He said this was unfair and he believed that the landlord thought he would simply accept it. He said the state of the communal areas of the flat when he left was not his sole responsibility. He accepted not having done a thorough clean but said it was not in the best condition when he moved in.

Findings in Fact

42. The Applicant and Respondent entered into a private residential tenancy at a property between the dates of 9th January and 5th June 2022.

43. The property comprised two bedrooms, a living room, kitchen and bathroom.

44. Another person occupied the property during this time in terms of a separate tenancy agreement with the Respondent and this person made use of the living room, kitchen and bathroom as did the Applicant.

45. The Applicant paid the Respondent the sum of £600 by way of a deposit before the start of the tenancy.

46. The Respondent provided a tenancy agreement which set out areas of pre-existing damage at the property and damages which would be covered by the deposit which were holes in walls/doors, broken windows, burns to floors or furniture, cracked induction hob, a cracked bathroom sink or toilet, a smashed television or other major intentional property damage.

47. The tenancy agreement stated that the deposit would not receive deductions for minor issues such as missing or broken kitchen utensils, small marks or scratches to doors, walls and it would not cover appliances which stop working of their own accord.

48. The Applicant sustained an injury some two days before he was due to vacate the property, and his mobility was restricted as a result of this accident.

49. The Applicant hoovered his room and the living room when he left and took his property from the fridge in the kitchen.

50. When the Applicant left the property there were items of property under his bed and some foodstuffs in the kitchen.

51. The Applicant could not clean the property to the extent he would have done before he left the property due to his injury.

52. Up to 4 hours cleaning of the property was required to be done by the Respondent when the Applicant left the property, and this required the use of cleaning products.

53. This cleaning related in the main to communal areas used by both tenants.

54. The sum of £40 to cover half of the cleaning costs of four hours at £20 per hour falls to be deducted from the Applicant's deposit paid in terms of this tenancy together with £20 towards cleaning products giving total deductions of £60.

55. The sum of £540 is lawfully due by the Respondent to the Applicant by way of the deposit paid by him less deductions set out above.

Reasons for Decision

56. The tribunal accepted the evidence of the Applicant as to the condition of the property when he took up occupation and at the end of his tenancy. His evidence was measured and appeared credible and reliable. He had lodged photographs of his bedroom showing what appeared to be flowers in a vase and a floor which looked clear of items although it did not show the view under the bed. He accepted the need for some cleaning after he left and that this could be deducted from the deposit. He considered the Respondent had exaggerated the amount of cleaning needed and had failed to take account of the fact that the property had been occupied by two tenants and that both had used communal areas when he did not return his whole deposit.

The Tribunal considered that this appeared to a correct assessment of the position. For some reason the Respondent had returned all the deposit paid by the other tenant having formed the view that he had been cleaner than the Applicant. The Respondent failed to lodge evidence to support this assertion, or the amount of cleaning required. The Tribunal could not determine on the balance of probabilities that new cushions were required due to damage caused by the Applicant or that new saucepans had burn marks or scratches due to a lack of evidence. It was not clear from the initial appearance of the Respondent at the first case management discussion why a china cup and drinking glass had to be disposed of by him. The Respondent had not engaged with the Tribunal or appeared after the first case management discussion. The Tribunal was satisfied on the balance of probabilities that some cleaning was required at the property and considered in the absence of a professional cleaner being employed to deal with matters, that it was reasonable to allow a deduction of £20 per hour for this cost and it appeared reasonable given the evidence before the Tribunal and the number of rooms at the property to allow for up to 4 hours' cleaning costs. This sum required to be halved and split between the two tenants as both made use of the communal areas where most of the cleaning appeared to be required. The Tribunal also allowed £20 towards cleaning materials used for cleaning. This gave a total deduction against the deposit of the Applicant of £60 and the balance of £540 to be repaid to him.

On the facts before it in this application the Tribunal had cause to suspect that that landlord in relation to this private residential tenancy is not registered and in terms of section 72 of the Private Housing (Tenancies) (Scotland) Act 2016 will report this to the relevant local authority.

Decision

The Tribunal determined that the Respondent pay to the Applicant the sum of Five Hundred and Forty Pounds (£540.00) only.

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.

Valerie Bremner

1st September 2023

Legal Member/Chair

Date