



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/19/3020

**Re: Property at 104 Queensborough Gardens, Flat 1-2, Glasgow, G12 9RU (“the
Property”)**

Parties:

**Mr Raghbir Panesar, 39 Westerton Avenue, Bearsden, Glasgow, G61 1HW (“the
Applicant”)**

**Miss Cressa McLaren, 335 Dumbarton Road, Flat 3-1, Glasgow, G11 6AL (“the
Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member) and Linda Reid (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

[1] This is an application for a payment order dated 1st October 2019 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[2] The Applicant seeks from the Respondent payment of damages in respect of repair and reinstatement works to the Property which he asserts were required as a result of the Respondents’ occupation of the Property, and provided with his application copies of the short assured tenancy agreement, invoices for work, photographs, inventory inspection reports and other documentation.

[3] The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

[4] A Case Management Discussion was held on 9th January 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant did not appear, but was represented by Mr Joshi and Miss Friel, letting agents. The Respondent appeared, and was not represented.

[5] The Tribunal confirmed the claim was disputed by the Respondent, and the Tribunal concluded a Hearing would be required to determine these matters, which was set for 19th February 2020.

The Hearing

[6] A Hearing was held on 19th February 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant again did not appear, but again was represented by Mr Joshi and Miss Friel, letting agents. The Respondent again appeared, and was not represented.

[7] The Tribunal heard evidence from Mr Joshi and from Miss Friel on behalf of the Applicant. The Tribunal also heard evidence from the Respondent. Due to insufficient time to conclude the Hearing, the Tribunal continued the Hearing to a further date.

[8] There was a considerable delay in setting the continued Hearing as a result of the coronavirus pandemic, and the lockdown imposed in the United Kingdom as a consequence thereof. The Parties were subsequently notified with the details of a Tele-Conference and provided with dial-in details.

The Continued Hearing

[9] A Continued Hearing was held at 10.00 on 12th August 2020 by Tele-Conference. The Applicant again did not appear, but again was represented by Mr Joshi and Miss Friel, letting agents. The Respondent again appeared, and was not represented.

[10] At the continued hearing, the Tribunal heard the remaining evidence on behalf of the Respondent from her two witnesses, Ms Itxaso Moreno and Mr Andy Lewin.

[11] The Applicant seeks damages in this application, which are comprised of £925.00 in respect of the cost of re-decorating the Property, and £275.00 in respect of the cost of cleaning the Property.

Findings in fact

[12] After hearing all the evidence led on behalf of both parties on the issues in dispute between them and upon which the Tribunal requires to reach a decision, the Tribunal found in fact:

- 1) That the Respondent was tenant at the Property for a period commencing 12th March 2016 until she left on 18th March 2019.
- 2) That when the Respondent moved in to the Property, she discovered that it had not been properly cleaned, as she had been advised by the Applicant's representatives that it would. In particular, the kitchen area had not been properly cleaned. The ventilator in the kitchen was covered in grease and dust, the oven and hob had been heavily used without being properly cleaned, and the floors throughout the Property were dusty.
- 3) That the Respondent had in good faith carried out cleaning of the Property the day after she moved out, with the assistance of Mr Lewin, prior to returning the keys.
- 4) That the quality of that cleaning work carried out by the Respondent and Mr Lewin was of a sufficient and acceptable standard to meet her obligations under the lease, and left the Property in similar or better condition than when the Respondent moved in aside from fair wear and tear.
- 5) That any blemishes to the cosmetic finishes to the paintwork on the walls of the Property were minor and cosmetic, and amounted to fair wear and tear caused by normal usage of the Property by the tenant and her family.
- 6) That the Applicant is not in consequence entitled to payment from the Respondent of the sums sought in respect of redecoration and cleaning, and the Respondent is not liable for those in terms of the lease agreement.

The Evidence

[13] The Tribunal heard from both Mr Joshi and Miss Friel in evidence. Both were clear and measured in explaining their position. The Tribunal found both to be credible in their evidence concerning the issues in dispute in this application. However, the Tribunal did not find them to be reliable in certain important respects.

[14] Mr Joshi explained that all costs in relation to cleaning and redecoration of the properties which his business let would be passed on to the tenant. The landlord would not pay any of these costs. His view was that if at the end of a tenancy any redecoration or cleaning work was required, then the cost of that fell to be paid by the outgoing tenant. He did not consider these expenditures to fall under the category of "fair wear and tear".

[15] Mr Joshi stated that the Respondent had made little complaint regarding the condition of the Property after moving in. He did offer to send a cleaner to remedy any issues with cleaning, but the Respondent had not taken that offer up.

[16] After the Respondent's departure, Mr Joshi stated that the Property needed repainting due to scuff marks on some of the walls, and also cleaning due to the kitchen, in particular, not having been fully cleaned to a satisfactory standard.

[17] Miss Friel gave evidence that reinforced Mr Joshi's position. However, she relied upon an "inventory and check-in report" to evidence that the Property was in excellent decorative order and cleanliness when the Respondent moved in.

[18] The Respondent and the Tribunal noted that both the report, and the photographs contained within it, were all date-marked 31st January 2012. That date is a little over four years prior to the commencement of the Respondent's lease. Miss Friel's response was to state that due to an IT issue which she was unable to properly explain, the software on the tablet she used for the report had applied the wrong date to both the report and the photographs. She insisted that the photographs and the report were an accurate record of the condition of the Property in March 2016.

[19] Miss Friel did not accept that the Property had not been properly cleaned before the Respondent took entry, and agreed with Mr Joshi's assessment that a tenant such as the Respondent, rather than the landlord, should pay for the cost of cleaning and redecoration at the end of the lease. Miss Friel did not consider that the Respondent had properly cleaned the Property prior to her departure, and did not accept that the various marks and scuffs on the wall could be categorised as "fair wear and tear". She referred to the pictures contained in the move out report in support of her contentions.

[20] The Tribunal noted that the move out checklist lodged by the Applicant included a section "Tenant advised of issues they need to address". When asked if the Respondent had been offered the opportunity to address the issues which were identified, Miss Friel stated that she had not, as the form was wrong and the replacement tenant was due to move in shortly.

[21] In response, the Respondent gave evidence that the Property was dirty and had not been cleaned when she first viewed it, but confirmed with the letting agent that it would be properly cleaned before she moved in.

[22] The Respondent gave evidence that when she moved in, she was disappointed to find that the Property had not been cleaned. In particular, the kitchen area had not been properly cleaned. The ventilator in the kitchen was covered in grease and dust, the oven and hob had been heavily used without being properly cleaned, and the floors throughout the Property were dusty.

[23] The Respondent stated that she had reported her concern to the letting agent, who offered to send a cleaner at the end of the week. She was now living in the Property with her two children, and could not wait that long for a cleaner, so she undertook the cleaning work herself.

[24] The Respondent gave evidence that she moved out of the Property on 16th March 2019, and returned the following day with her friend, Mr Lewin, to clean the now empty Property. She duly did that, and in her opinion the Property was left in a satisfactory clean condition. She noted that she had been unable to remove the fixing screws to allow her to clean under the glass on the oven door. She did not dispute that the pictures contained in the move out report were accurate, but felt these showed no more than fair wear and tear.

[25] The Respondent readily accepted that there were a number of small scuff marks and blemishes to the walls, but considered that these were very minor cosmetic issues caused by ordinary use of the Property by her and her children, and amounted to fair wear and tear.

[26] The Tribunal found the Respondent to be clear and straightforward in her evidence, and found her to be credible and reliable in her account.

[27] Ms Moreno gave evidence that she had attended the viewing of the Property with her friend, the Respondent. She noted that the Property had not been cleaned to the sort of standard she would expect of a Property exposed for let, and understood that it would be cleaned prior to the commencement of the lease with the Respondent. She noted that the paintwork was in reasonably good order, but that it had certainly not been freshly painted.

[28] Miss Moreno attended the Property the evening of the day when the Respondent moved in to visit, and noted that it had not been cleaned, and was in much the same condition as when she and the Respondent had previously viewed it. In particular, the kitchen area had not been properly cleaned. The ventilator in the kitchen was covered in grease and dust, the oven and hob had been heavily used without being properly cleaned, and the floors throughout the Property were dusty.

[29] Miss Moreno stated that she attended the Property on the day the Respondent moved out, as she was packing, and noted that the cleanliness and condition of the Property at that point was no worse than it had been when the Respondent moved in. She was aware that the Respondent intended to return to clean the Property the following day, but she did not return to see it after that had taken place.

[30] The Tribunal found Ms Moreno to be clear and straightforward in her evidence, and found her to be credible and reliable in her account.

[31] Finally, the Tribunal heard evidence from Mr Andy Lewin. He had not met the Respondent at the time she commenced the lease, but was her friend by the time she left. He gave evidence that he attended with the Respondent on 17th March 2019 to assist her with cleaning the, by then, empty Property.

[32] Mr Lewin explained that he provided the Respondent with the use of his vacuum cleaner, and that he personally hoovered the floors of the Property. He stated that he saw the Respondent then mop the hard flooring, and also saw her cleaning the surfaces in the kitchen, and the window sills and surfaces through the Property.

[33] Mr Lewin, when it was put to him by Mr Joshi in cross-examination that he was wrong in his conclusions from his inspection, noted that he was not carrying out an inspection. He was merely assisting his friend. He confirmed that in his view, the Property was left in a satisfactory clean condition, but readily conceded he had not checked every part of the Property nor inside every cupboard.

[34] Mr Lewin stated that the walls of the Property did have various slight scrape and scuff marks, but that in his view these were of the type to be expected from normal usage of the Property by a family with two children, and were minor cosmetic issues.

[35] The Tribunal found Mr Lewin to be clear and straightforward in his evidence, and found him to be credible and reliable in his account.

Statement of Reasons

[36] Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

[37] Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of sums due by a tenant (such as the Respondent) under a short assured tenancy such as this.

[38] The Tribunal found the Respondent, Ms Moreno and Mr Lewin in all material respects to be credible and reliable witnesses in relation to the facts in dispute between the parties in this application, for the reasons earlier explained. In these circumstances, the Tribunal accepted their evidence regarding the areas of dispute between the parties.

[39] The Tribunal found both Mr Joshi and Miss Friel credible, but unreliable in relation to the facts in dispute between the parties in this application for the reasons earlier explained, and accordingly did not accept their evidence regarding the disputed matters and preferred the evidence of the Respondent.

[40] The evidence of the condition of the Property at the commencement of the tenancy was spoken to by the Respondent and Ms Moreno. In the Tribunal's view, there was little evidential value in the check-in report provided by Miss Friel, in circumstances where, for reasons she could not satisfactorily explain, both the report itself and all of the photographs within it bore a date some four years before the commencement of the lease. For those reasons, the Tribunal preferred the evidence of the Respondent and Ms Moreno on this point.

[41] The relevant provision in the lease agreement is Clause 4, which provides that the tenant is “liable for the costs of making good any damage or cleaning found necessary at the end of the tenancy, fair wear and tear excepted”. The question which falls to be answered by the Tribunal in this application, is whether the Respondent was in breach of that term of the contract.

[42] The Tribunal preferred the evidence of the Respondent, Miss Moreno and Mr Lewin regarding the condition of the Property both at the commencement, and at the end, of the lease. From the evidence it heard, the Tribunal concluded that any damage to the Property was minor and cosmetic, and fell within the category of fair wear and tear one might expect after three years of occupation by a tenant with children.

[43] Similarly, the Tribunal concluded that the Respondent had left the Property in a satisfactory condition with regard to its cleanliness, and in a better condition than when the lease commenced.

[44] The Tribunal accepted that the Applicant had expended the sums shown on the invoices lodged. The Tribunal noted that the Applicant's representatives appeared to genuinely understand that all costs with regard to normal redecoration and cleaning would fall upon a tenant, and that a landlord should never bear those expenses.

[45] The Tribunal respectfully disagrees with that assessment. Clauses such as clause 4 in this tenancy agreement provide for the recovery from the tenant of cleaning and redecoration costs where the tenant has caused uncleanliness or damage other than by ordinary and responsible use of the subjects of let. There are normal expenses which a landlord is responsible for, and which do not fall upon the tenant to pay, such as a thorough clean before a new tenant takes entry, and periodic "freshening up" of the interior paintwork.

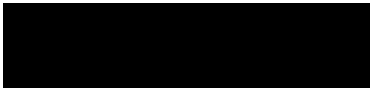
[46] The Tribunal noted that the Property had not been repainted when the Respondent took entry. By the time the Respondent left the Property, it had evidently not been painted for, in all probability, at least three and a half years (prior to the previous tenant's occupation), and possibly rather longer. The invoice produced by the Applicant indicated that only one coat of paint was required, which suggests that the blemishes to the décor were not substantial.

Decision

[47] For the above reasons, the Tribunal will dismiss this application.

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.



12th August 2020

Legal Member/Chair

Date