



**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/18/2700

Re: Property at 20 Collochán Drive, Dumfries, DG2 9FH (“the Property”)

Parties:

Mr Peter Blake and Ms Eileen Macalister, residing together at Lower Flat Ellerslie, Old Edinburgh Road, Moffat, Dumfriesshire, DG10 9RU (“the Applicants”)

Ms Theresa Hiddleston (otherwise known as "Theresa Ashby") and Mr Ashley Towers, residing together at 3 The Spiers, Cross Michael, Dumfriesshire, DG7 3AU (“the Respondent”)

Tribunal Members:

Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

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

Background

1. An application was received under rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) for an order for payment in relation to costs incurred for the condition of the Property at the termination of a tenancy agreement between the Applicant and the Respondent.
2. The application included the following documents :-
 - Short assured tenancy agreement
 - Bank statements during May-September 2018
 - Letter re: housing benefit
 - Letter to Respondents re: damage to the Property

- Time line of events
 - Statement of rent due
 - A list of the damage
 - Invoices for the works carried out
 - Photographs
3. A case management discussion took place on 15 January 2019. Reference is made to the terms of the case management discussion note. It is noted that the First Respondent advised that she was not disputing the rent arrears. She advised that she was disputing a number of the damage items claimed.
 4. The Applicant lodged further productions prior to the hearing in a letter dated 2 February 2019; the First Respondent submitted an inventory of productions and productions by letter dated 9 May 2019.
 5. Both Applicants were in attendance with a supporter Ms Hollis. The First Respondent appeared with her solicitor, Ms Raymond. Ms Raymond advised that she was only representing the First Respondent. The First Respondent advised that the Second Respondent was aware of today's hearing however he had had to stay at home to care for the children.

Hearing

6. As a preliminary matter, the Respondent's solicitor confirmed that the Respondent was not opposing the rent arrears claim; and further was not disputing the damages claimed in relation to the replacement of light cord (£9.95) and labour to replace the cord; the skirting board in the front bedroom; costs for the locksmith; removal of the kitchen worktop.
7. In proceeding to deal with the claim, the Tribunal considered the damages as set out in the Applicants' document entitled "*Repairs during and following the end of the tenancy on 14 September 2018.*"
8. Dynarod: the Applicants advised that they had received a call from Dumfries and Galloway Council on around 3 August 2017 advising that there were a number of issues with the condition of the property, including that there were blocked drains. The Applicant instructed Dynarod to attend, they did and unblocked the drain. Dynarod provided a report which advised that the drains had been blocked by baby wipes. The First Applicant, Ms Eileen Macalister for advised that the drains were not connected to other houses, such that those houses could have caused the blockage. She therefore considered that the blockage had been caused by the Respondents. She submitted in terms of Clause 7 of the tenancy agreement, the tenant is responsible for keep the property in good condition and clean.
9. The Respondent denied that the drains had been blocked by her or her family, and she advised that they did not use baby wipes.
10. Locksmith: The Respondent did not dispute this cost.

11. Windows - keys missing: the Applicant advised that when the Property was let to the Respondents there were around 7 keys left in the Property. After the tenancy ended there were no keys there. The Respondent advised that the inventory report refers to a "keys section" but it has not been completed and therefore it is unclear if there were any keys when the Respondents took over the Property.
12. The Applicant referred to the invoice from Glass and Glazing.
13. The Respondent's position was that they had encountered problems with the windows and they had instructed a local tradesman to replace the handles in one of the children's bedroom windows. She submitted that there had not been any keys in the Property. She advised that they did not report the missing keys to the landlord at the commencement of the tenancy. She did not report the broken handle to the landlord. She proceeded to get the repairs work carried out herself. She did not have any receipt for this work. She said she did not report this to the landlord as she had been reporting a lot of issues and did not want to complain about another. The Applicant disputed this and advised that the repairs to the boiler and the radiator had not been raised until later on in the tenancy. The Respondent stated that she handed the two keys for the replacement handles to the landlord when she vacated the Property. The Applicant disputed this.
14. Drain cleared: The Applicant advised that there had been rubbish thrown down one of the drains. This was discovered at the end of the tenancy. The Applicant advised that when the tenancy had ended they found the drain cover at the front of the property to have been removed and noticed that there was a plant pot and soil down it. It was too deep for the Applicant to repair this. They had to arrange for a plumber. She referred to the invoice from SOS Drain Ltd and a picture showing the pot in the drain.
15. The Respondent denied that the damage had been caused by her or her family. She advised that when they moved out there had been three plant pots on the top of the drain cover, and when they were moving out they had returned on one occasion and one pot was missing. She denied putting the pot down the drain. She did not know who did this. She said that it may have been neighbours or the Applicants themselves.
16. Painter and decorator: the Applicant advised that the house was filthy when the Respondent vacated the Property. The Property required painting from top to bottom; there was ink, sticky sweets and juice on walls, holes in walls, she referred to the painting invoice from GG Anderson dated 10/10/18. She referred to Clause 8 of the tenancy agreement that the Property is to be in good and tenable condition and repair. The Property had been all newly painted when the Respondent had moved in and it needed to be painted when they moved out.
17. The Respondent denied that there were any repairs required to the Property or that there was need to repaint the whole Property. She advised that she had also decorated the Property during her time there. The Respondent then referred to her Production 2 page 3, a report compiled by the Intensive Family Support

Service at Dumfries and Galloway Council. The writers of the report had found the “condition of the family home was consistently good” and, “bedrooms were decorated to a high standard”. The Respondent submitted that she believed that this report had been completed over a period of months between May and August 2018. The Respondent advised that there had been a number of occasions when the Applicants had been in the Property, including towards the end of the tenancy and the Applicants had not raised any concerns about the condition of the Property during those visits. She also advised that they had been living in the Property for three years and it is going to get some marks on it for wear and tear. There were three children and two adults in the Property.

18. The Applicant advised that when they took the Property back it was in a dreadful state and she was not sure what had happened in the four weeks between her final visit and the Respondents leaving the Property. The Applicant advised that they had visited the Property on the 6th August following the letter from Dumfries and Galloway council and they had seen round most of the house, but not the family bathroom and the garden.
19. Electrical : (new shower, repair lighting that was unfit for purpose – live wires hanging from the ceiling, replace damaged light in kitchen, replace and repair shower pull, etc.) The Applicant advised that after the respondents had vacated the Property there were a number of electrical items which needed to be repaired, namely, 1 light in living room; head had been taken off the shower in the bathroom; kitchen light cover had been removed; hall lighting not working; downstairs light hanging down; upstairs light live wiring hanging out.
20. The Respondent’s position was that there had been some electrical lighting carried out by the former tenants. Reference was made to the Respondent’s document (production 7) of text messages between the Respondent and the wife of the former tenant. She advised that she did not have a problem with the lights although had to replace the light bulbs frequently. She advised that the downstairs bathroom light worked however would pop out a lot. She advised that any wiring issues were not her fault. She had believed that the damaged light fitting in the upstairs hall was a smoke alarm.
21. She advised that the cover was in place in the kitchen light when they left the Property.
22. The Applicant advised that the circular bulkhead had to be replaced as the lights were not working in the Property.
23. The Applicant advised that the shower head could not be replaced and so they had to replace the whole shower.
24. The Respondent submitted that the shower had been working when she had left the Property. The Respondent advised that the shower was old. The Applicant confirmed that the Property had been built in 2004 and it was the original shower.

25. Ground works: (clearing of garden rubbish – removal of wall; supply of topsoil and grass seed; re-attach fencing; repair gate). The Applicant advised that the garden consisted of an area of grassed land and then a wooded area; the two areas are separated by a fence. The fence had been sawn through and the wooded area had been used as dumping ground for rubbish. There was also a half built wall. There was other fencing that was missing. When the Respondent had taken the Property there had been around two slats missing and there was now around 13 missing. The garden gate was now broken. The whole garden needed to be re-seeded. She referred to Production 17 of the Inventory 2. She also referred to the Ground works invoice. The wooded area was in such a mess that she had had to put bark down. She advised that she also needed to put top soil down when the grass seed was put down. They had to remove bricks and breeze blocks where the half built wall was. In relation to the fence in front of the wooded area, she had been advised that it would be easier and cheaper to replace it rather than repair it.

26. The Respondent advised that she had not used the wooded area; she advised that she was not aware that it was part of the garden area. She denied that she had dumped rubbish in this wooded area. She considered that the work that the Applicant had done to the wooded area was betterment laying bark and putting up a brand new fence. She advised that the garden was boggy. The gate had blown down. She denied that she had removed the fence slats. The Respondent advised that she had removed any rubbish from the garden area before she left. She referred to Production 6 of Respondent productions.

27. Cleaning of Property: the Applicant referred to the Sally Carmichael invoice for £220, £12 per hour. There had been a full clean of the Property. There had been chewing gum on the stairs; carpets needed cleaning; windows needed cleaning; all rooms had been cleaned except for the kitchen and bathroom.

28. The Respondent disputed that the Property had been left in poor state. She submitted that she had cleaned the carpets before they left, except for the kitchen she had left the whole house clean. She submitted that the top bedroom had a brand-new carpet fitted by her.

29. The Applicant advised that they considered that the previous tenant had left the Property in a satisfactory condition however they had still had it cleaned; she submitted that there was a difference in the cleaning bills. The Respondent referred to the difference in the two cleaning bills in the inventories for the Applicants. The first, (no 27) dated 3.2.16, the bill was £100. The second cleaning bill at the end of this tenancy was £220. There was no detail as to what distinguished the two bills.

30. The Applicant advised the difference was reflected in the poor condition of the Property, but also that the price of cleaning had increased.

31. Plumber: (removal of earth and slugs from blocked u-bend in bathroom; repair of damaged valve on downstairs toilet radiator; replacement of syphon in toilet cistern). The Applicant advised that they noticed black water rising from the sink

in the family bathroom and when they opened up the sink they discovered that there had been soil and slugs in it. In the main bathroom they had to replace the toilet syphon, and the plumber had advised that this could not have been broken by accident. The radiator was leaking and had not been leaking when the Respondent had moved into the Property.

32. The Respondent advised that they had advised the landlord regarding the radiator. She denied that they had put soil and slugs down the sink. She explained that there had been "black stuff" coming up from the drains and she referred to the blockage reported earlier to the Council. She submitted that the radiator being drained was down to general wear and tear. The change of flushing valves in a Property which was built in 2004 again was general wear and tear.
33. The Applicant advised that the plumber had indicated that the soil could not have travelled up into the u-bend and therefore she disputed the Respondent's position. She also submitted that the two plumbers who had dealt with earlier blockages had flushed out the plumbing. This was disputed by the Respondent however as she advised that no plumber had been in the Property to flush the system out.
34. Joinery: (Repair to kitchen work surface, sink, taps and proportion of cost of hob; Fire doors). The Applicant advised that the joinery work consisted of the replacement of the kitchen worktop, including the kitchen sink and hob. The Respondent had advised that the sink and tap were broken. The Applicant submitted that the work surface needed to be replaced as it had been cut to put in an American style fridge freezer. What was left of the worktop was not large enough to hold the sink in place. Only one ring on the hob was working and she submitted that the Respondent had accepted that this was her fault.
35. The Respondent denied that she had broken the sink and the hob. She advised that she had used it daily. She admitted that she had cut the worktop. She advised that the tap had fallen off but thought this was wear and tear. She submitted that only one ring on the hob was broken, and it was unreasonable to expect a whole new replacement.
36. The Applicant advised that when the Property was empty they noted that the fire doors had been damaged with the chains and plates removed. They did not give permission for this and were concerned as it voided their insurance. This had been done in the kitchen, living room and 3 bedrooms.
37. The Respondent denied removing the chains and the plates.
38. The Applicant submitted that there were three breaches of clauses 5, 7 and 8 of the tenancy agreement. She referred to the check-in report which had been independently prepared. She advised that it was herself who prepared the check-out inventory.

39. The Respondent's position was the sums sought for the damages were excessive. It appeared that the Applicants were seeking to do improvement works to the Property and charge the Respondents for those works. They had also not charged the previous tenant for the same works, e.g. the repainting of the bedroom and cleaning. She submitted that there had been bad feeling when the Respondent had contacted Dumfries and Galloway Council and they had become involved in the repairs needed to the Property. It had been a difficult situation for the respondent who was being evicted, she had to try and find suitable accommodation for her family, and this was important given that she wanted her children to remain in the same schools.
40. Evidence was also given by a witness for the Applicant, David Callander; he was the previous tenant in the Property, residing there from June 2013 until January 2016. He advised that the Property had been in a reasonable condition when he had resided there, subject to wear and tear, he left it in better condition or the same. He advised that he had made changes to the electrics, he had put some LED lighting in to the master bedroom cupboard, and second floor bathroom. He added kitchen lighting. He had also painted the bedroom without permission. He advised that the doors in the Property were all fire doors when he took entry and when he left. He found the Applicants to be reasonable and pleasant landlords. He thought that the emails between the Respondent and his wife were "tittle tattle". He advised that he had not done a lot of electrical works only what he had confirmed. He advised that there was some broken areas in the fencing; he thought that there were around 3 slats missing. He advised that there had been a faulty diverter valve in the boiler, they had contacted the Applicant and they had had it repaired. He had not been aware that the wooded area was part of the garden ground. He had not been aware that the Applicants had had it re-painted when they left the Property or that it had been deep cleaned. He advised that there were keys in the key locks or on the window sills. He was unaware of any problems with the upstairs windows. He advised that there had never been any problems with the drains during his time in the Property. He appeared to the Tribunal to be credible in his evidence.

Findings in Fact

41. That a lease agreement was entered into between the parties.
42. That the lease commenced on 5 February 2016 and ended on 14 September 2018.
43. That the lease agreement contains the following clauses relevant to the application:- 5 – alterations; 7 - tenant's maintenance obligations; and 8 - The tenant accepts the property in good and tenantable condition.
44. That the Respondents resided in the Property with their three children.
45. That a check in inventory report had been prepared on 2 February 2016.

46. That there were rent arrears outstanding at the end of the tenancy totalling £1,109.50.
47. That the deposit had been paid to the Applicants at the end of the tenancy.
48. That invoices for works done at the end of the tenancy had been submitted to support the claim which the Applicants made.
49. That a locksmith had been needed to change the locks for the doors as keys had not been returned.
50. That there had at least 3 been drain blockages at the Property during the tenancy.
51. That there had been window keys in the Property when the former tenant left the property and that there had been no keys in the Property at the end of the respondents' tenancy.
52. That there had been live wiring showing, and a light cover missing at the end of the tenancy.
53. That there had been breeze blocks left in the garden and some other items of rubbish at the end of the tenancy. That there were around 13 missing garden fence slats at the end of the tenancy.
54. That part of the kitchen work top had been sawn off.
55. Those fire doors had been damaged on or before the 14 September 2018. That they had not been damaged when the tenancy had commenced.

Reasons for Decision

56. The decision of the tribunal is to grant an order for payment in favour of the Applicants for the sum of £2614 for damages to the Property and £1109.50 for outstanding rent, less the deposit of £625 which has been paid to the Applicants.
57. The sum for damages is calculated on the following basis:-
58. Dynarod £90 awarded. We have awarded the costs to the Applicants for these works. It appeared to us that there had not been any previous concerns in relation to the drainage, other than during the tenancy of the Respondents. We note that the Respondents had children, and we think it likely that wipes were put down the toilet during the respondents' occupation of the property. We did not think that the explanation provided by the Respondent was plausible.
59. Locksmith £136 awarded. The Respondent is not disputing these costs.

60. Window keys £80 awarded. While there was no certainty as to exactly how many keys there were in the Property when the Respondent took over the tenancy, we considered that the evidence of the Applicants' witness that there had been keys in the windows was credible. We did not think that the Respondent's explanation about the replacing handles explained what had happened to the keys, and we preferred the evidence of the Applicants and their witness on this issue.
61. Drain clearing £90 awarded. We noted the photographic evidence in relation to this drain, and we preferred the evidence of the Applicant, that it was not something she could have sorted herself. We consider that the Respondent did not have a plausible explanation for what had happened to the pot. Given that the Respondent acknowledged it had been her plant pot and it had been on top of the drain, we think that she was responsible for ensuring that such items were removed prior to her ending her tenancy.
62. Repainting £400 awarded. We note that there was a degree of animosity between the parties during the course of the hearing. We noted that although the previous tenant had repainted without permission, and the Applicant had repainted the Property after he left, the previous tenant was not charged for that work. It was not therefore altogether clear to the Tribunal why the Respondents were being charged for repainting costs, other than there was a degree of leniency shown to the previous tenant in relation to complying with the tenancy agreement which was not being shown to the Respondents. We did consider that the tenancy agreement did support the claim for repainting if enforced.
63. That said while we did take into account that the Property had been newly repainted when the Respondents moved into the Property, we consider that there has to be allowance for fair wear and tear, especially when there are children living in the Property. We also took into account that the family had resided there for over two and half years. We think that it is likely that the Property would have required to be decorated, if not immediately after the end of the tenancy, then certainly sometime in the near future. Therefore, we consider that the sum of £400 is an appropriate figure to award the Applicants for these costs.
64. Electrical works £219 awarded. We did not consider that it was reasonable for the Respondents to meet all of the electrical costs which have been sought. We considered that the Respondents should meet the costs of slimline fitting, circular bulkhead, spotlight, and halogen lamp, pull switch sundries, switch and 3.5 hours workmen time. We did not consider that it was reasonable for the other costs to be borne by the Respondents. We are also not prepared to make any award for the replacement of the shower. We noted that it is 14 years old and therefore, it would not be reasonable to expect the Respondents to pay for a brand new shower. We are prepared therefore to award £219 (inclusive of VAT) in costs for the electrical works.
65. Grounds Work £364 awarded. We were prepared to accept that there had been some damage in the garden area and some items which needed cleaning up. That said we did not consider that the items set out in the invoice should be met

in full by the Respondents. We consider that there was a degree of betterment in a number of the items claimed, including seeking costs for bark, top soil and the removal and replacement of the original fence. We consider that a sum of £364 (inclusive of VAT) is a more reasonable sum to award under this heading.

66. Cleaning £100 awarded. We are prepared to accept that there may have been some additional cleaning required in lieu of there being 5 people in the house. However we noted that there was no change to the previous tenants for the deep clean which was undertaken after they had left. We note the Family Support report raised no concerns about the condition of the Property, and also the Applicants did not raise any concerns on any of the earlier visits made. While we are prepared to award something towards the cleaning of the Property as we consider that the tenancy agreement supports that charge, we think that a cost of £100 is more reasonable.

67. Plumbing works £55 awarded. We did not find the explanation put forward by the Respondent for the soil and slugs down the sink drain credible. We preferred the Applicants on this issue. However, we considered that the other works carried out by the plumber fell into matters more akin to wear and tear to the Property, and this is particularly so given this Property had been rented out for a number of years and the items replaced were in the region of 14 years old. On that basis we considered that a sum of £55 for the plumbing costs would be fair and reasonable.

68. Joinery works £1080 awarded. We did not consider that the explanation by the Respondent was credible for the damage to the fire doors, and we consider that the full costs of repairing these doors should be awarded to the Applicants. We did not however consider that it was not reasonable to seek costs for replacing the hob, sink and tap from the Respondent. Again this is a rented Property and these items were 14 years old. We considered that there should be some award made for the worktop replacement and we would award £200 for that. We consider that costs towards fitting should be restricted to £50 and in total we consider that the Respondent should pay joinery costs of £1080.

69. Finally, we would confirm that the Respondents may wish to make a time to pay application. If they wish to do, Parties are required to comply with the direction which is being issued with this written decision. In the event that there is no agreement on the terms of any time to pay offer made then a hearing shall be fixed and the Tribunal will determine the matter.

Decision

The tribunal grants an order in favour of the Applicants for THREE THOUSAND AND NINETY EIGHT POUNDS FIFTY PENCE (£3098.50) STERLING against the Respondents.

Note: Subject to the further procedure set out in the Notice of Direction to allow for a time to offer application to be made and determined.

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.

Melanie Barbour

Legal Member/Chair

23.5.19
Date