

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/18/0011**

**Re: Property at 31A Bridge Street, Kirkwall, Orkney, KW15 1XH ("the  
Property")**

**Parties:**

**Mr Colin Gregg, Mrs Anne Margaret Gregg, 1 Wivenhoe, Glaitness Road,  
Kirkwall, Orkney, KW15 1UW ("the Applicant")**

**Mr Anthony Stewart, 3 Whitmore Folly, Ayre Road, Kirkwall, Orkney, KW15 1QZ  
("the Respondent")**

**Tribunal Members:**

**Jan Todd (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the  
Tribunal") determined that an order for payment should be granted in the sum  
of £1895.24.**

- **Background**

This was an application for civil proceedings made by the Applicant by application dated 16<sup>th</sup> December 2017. The application had been scheduled for two previous case management discussions but these did not proceed due, in the main, to difficulties serving the papers on the Respondent who had moved address. The Respondent was finally served with papers and intimation of today's Case Management Discussion (CMD) by recorded delivery which the Respondent signed for on 13<sup>th</sup> August 2018.

The application was for payment of sums due to repair or replace what the applicant described as significant damage to the property caused by the Respondent. The total sum claimed is £1895.24 which includes a reduction of £450 being the deposit.

- **The Case Management Discussion**

The CMD was conducted by conference call which is authorised in terms of Rule 17 of the First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules).

The Tribunal convener introduced herself and asked the parties to introduce themselves. Mr Nicholson of Lows Solicitors advised he was on the call on behalf of the Applicant and that he was instructed to represent the Applicant. He confirmed he was fully briefed and had seen for himself the state of the Property after the tenant left it.

Mr Stewart the respondent was also on the call and confirmed he had received the all the papers that he had not sought legal advice and, in response to being asked by the convenor he confirmed that he did not want to seek legal advice.

Mr Nicholson advised that he was instructed to seek an order for payment for the full sum claimed being the sums spent and incurred by the Applicant in restoring and redecorating the property after the Respondent had negligently or through misuse damaged the property, all in terms of Clause 12 (d) of the Short Assured Tenancy entered into between the parties on 3<sup>rd</sup> March 2018.

The Convener asked Mr Stewart the Respondent what his position was and he advised that he accepted that he had caused the damage and that he was liable to pay for the repairs. He also advised though that he did not know how he could afford to.

The Convener then went through each head of claim as set out in the application and separate note of claim submitted by the Applicant and the Respondent admitted each item. Mr Nicholson advised in respect of the damage that:-

- I. The blinds were damaged and had to be replaced
- II. Both carpets in the flat were soiled beyond any ability to clean them and were burned with cigarette burns.
- III. The whole flat had to be redecorated, with holes in walls repaired where necessary, which is why the invoice from Bill Robinson in August 2017 when the work was carried out was for £1,360 compared to the invoice he submitted prior to the let which was for £675 when he was just doing some light redecoration.
- IV. In relation to the broken smoke alarm and door lock – Mr Nicholson advised the next tenant had fixed this and had the sums claimed deducted from his rent. The Respondent again did not challenge this when asked if he wished to, and accepted these sums as a reasonable estimate of the replacement of items he had damaged. The photographs submitted by the Applicant showed the damaged smoke alarm and other damage or soiling.

As the Respondent had admitted the sum due the Convener advised that it would be appropriate to find that the sum claimed was due and that a hearing would not be necessary.

There then followed a discussion about how to pay and the Convener advised that the Tribunal did not have the power to make a time to pay order. The Respondent agreed to go to Mr Nicholson's office to discuss an arrangement to pay and the Convener advised that an order for payment would be granted but that there would be no order for expenses as the Respondent had not put the applicant to any further expense in the conduct of the case and had not shown any unreasonable behaviour, which is the only basis for an award of expenses in terms of Rule 40 of the Rules.

### **Findings in Fact**

1. The Applicant and Respondent entered into a Short Assured Tenancy for the lease of the Property on 3<sup>rd</sup> March 2017.
2. The tenancy was for a period of 6 months and should have ended on 4<sup>th</sup> September.
3. The tenancy ended on 22<sup>nd</sup> May 2017 when the Respondent left the Property after the Applicant found out there was extensive damage to the Property.
4. The Respondent caused damage to the Property by neglect or misuse, including damage to the door lock, smoke alarm, soiling the carpets, damage to walls requiring full redecoration and damage to blinds.
5. The cost of the repair or replacement of this damage is £2,345.24
6. The deposit paid by the Respondent to the Applicant was £450 this was retained by the Landlord and not deposited in a tenancy deposit scheme (which is a breach of the Tenancy Deposit Scheme Regulations 2011 and it is noted that the tenant may have had a claim against the landlord for this breach if the claim had been made within 3 months of the tenancy ending.)
7. The net cost of the repair of the Property is therefore £1,895.24 which is the sum claimed.

### **• Reasons for Decision**

In terms of clause 12(d) of the Tenancy agreement the Tenant (the Respondent) agreed that "any repairs required as a result of the negligence accident or misuse or neglect and not natural wear and tear will be the responsibility of the tenant throughout the duration of the Agreement."

The Respondent admitted the damage caused and agreed the sums claimed were reasonable. The applicant had submitted photographs supporting the claim and the photographs did support the soiled carpets, dirty and damaged walls, damage to the smoke alarm and the general state of the property. The Tribunal also had sight of invoices for carpets, blinds and decoration. Given all the damage and amount claimed is admitted by the Respondent, and given the deposit sum has been

deducted from the cost of the repairs the sum claimed is appropriate and an order for payment was granted.

### **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.**

JAN TODD

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**Legal Member/Chair**

**Date**

3rd September 2018