



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 (1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/23/1069**

**Re: Property at 22H Adelphi, Aberdeen, AB11 5BL (“the Property”)**

**Parties:**

**Mr Gordon Smith, 14 Grampian Terrace, Torphins, AB31 4JS (“the Applicant”)**

**Mr Ayotunde Ayoade, Ifeoluwa Ayoade, 62 St Clair Kingsley Court, Aberdeen, AB24 5AJ (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Mike Scott (Ordinary Member)**

**Decision**

**[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the Application.**

**Background**

[2] The Applicant seeks a Payment Order in the sum of £1,678.66 in respect of certain costs claimed from the Respondents following on from the ending of a tenancy between the parties. A Hearing had been assigned after a Case Management Discussion and Directions were made to regulate procedure.

**The Hearing**

[3] The Hearing commenced by video call at 10 am on 26 October 2023. All parties were personally present. The Applicant and the Respondents both confirmed that they had no

preliminary matters to raise and were happy for the Tribunal to commence hearing evidence.

[4] The Respondents confirmed that they would also wish the Tribunal to hear evidence from a witness, Pastor Joseph Okafor. He had been mentioned in the body of a longer set of representations submitted by the Applicant but it hadn't been made readily identifiable that they intended the Tribunal to hear evidence from such a witness.

[5] The Respondents had certainly not provided the Tribunal with his contact details as ordered in the Direction made which regulated matters in respect of the submission of evidence and the identities of witnesses. Nevertheless, the Tribunal decided that it would be reasonable to allow the witness to give evidence as he had been mentioned in a document as a potential witness albeit it was not made particularly clear.

[6] Accordingly, the Tribunal heard evidence from the Applicant and the Respondents and Pastor Joseph Okafor. Each party had the right to cross-examine each witness and after hearing evidence, each party was given the opportunity to make closing submissions. The Tribunal thereafter adjourned to consider its decision.

[7] Having done so, the Tribunal made the following findings in fact.

### **Findings in fact**

- I. *The parties entered into a tenancy agreement whereby the Applicant let the Property to the Respondents by virtue of a Private Residential Tenancy Agreement that commenced on 11 March 2022;*
- II. *The Respondents paid a deposit of £325.00 to the Applicant at the outset of the tenancy;*
- III. *The Applicant visited the Property on an occasion between March and May of 2022. At that point the Applicant noticed no issues regarding the presence of mildew or condensation in the Property;*
- IV. *There was a more formal inspection of the Property carried out on the instructions of the Applicant that took place in June 2022. At that point, the presence of mildew was noted throughout the Property;*
- V. *Mildew therefore appears to have developed in the Property at some point between March and May 2022 and June 2022;*

- VI. *The Respondent has produced a check-out report which purports to document the condition of the Property when the Respondents vacated. It makes some observations comparing the condition of the Property to how it was at the outset of the tenancy. The report confirms the presence of mildew and states that "further investigation may be required to determine cause and culpability";*
- VII. *The Applicant has carried out no such further investigations;*
- VIII. *The Applicant makes allegations that the "lifestyle" of the Respondents has caused the mildew. There is no evidence that might support such a contention;*
- IX. *The Applicant alleges that the Respondents also failed to notify him or his agents of the presence of mildew which caused it to spread. However, the Respondents did inform their letting agent of the presence of mildew and they were sent an email from the letting agent explaining how they might try and mitigate its presence. There is nothing to suggest that the Respondents failed to act appropriately in trying to manage the mildew in the Property;*
- X. *The Applicant was in any event made aware of the mildew or ought to have been aware of it after the inspection in June 2022 which is within the time period when it is thought to have first appeared;*
- XI. *The Applicant has no factual basis for alleging that the Respondents caused the mildew to spread or failed to inform anyone of its presence;*
- XII. *The Respondent claimed the entirety of the Respondents' deposit at the end of their tenancy. The Applicant himself acknowledged in evidence that, at the commencement of the tenancy, the Property had "marks on the worktop, stains on the floor, burn marks and marks on walls and a scratch on the door". This undermines the reliability of the check-out report submitted which appears to narrate these same issues as justifying withholding some of the Respondent's deposit or at least fail to acknowledge that or address is clearly;*
- XIII. *There are some relatively minor issues that are contained within the check-out report which would have been amply covered by the deposit retained by the Applicant. These include cleaning costs and minor, low level repairs;*
- XIV. *The Applicant also seeks to recover the painting and redecorating costs from the Respondents associated with the mildew issues. The check-out report refers to the decoration as follows: "walls have defects in places, walls would benefit from repainting and certain parts showing wear with age";*

- XV. *There appears no evidence to suggest that the Respondents ought properly to be found liable for the costs of any repairs over and above what was retained by the Applicant from the deposit.*

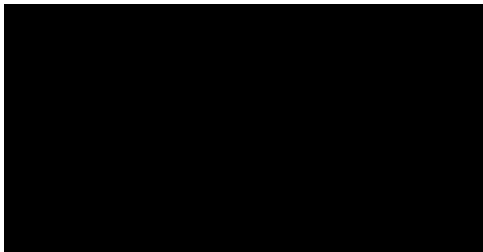
**Note:-**

[8] This case involved determining whether the Respondents should be found liable for costs incurred by the Applicant in making good damage to the Property at the end of the tenancy. The Tribunal heard from the Applicant and the Respondents and a witness on their behalf. After about thirty minutes into giving his evidence, the Applicant noted that he not lodged a check-in report which he wanted to refer to. The Applicant invited the Tribunal to allow this to be submitted now. The Tribunal considered this issue but decided that the case was too advanced to allow further documentation to be received. In any event, the check-out report before the Tribunal appeared to refer to the position at the start of the tenancy and so it was not considered to be in the interests of justice to delay matters for the submission of the check-in report.

[9] Having heard the case and made the above findings in fact, the Tribunal took the view that the Applicant had fallen way short of establishing that the presence of mildew and condensation in the Property was the fault of the Respondents. There was no real evidence that might support such a conclusion other than asking the Tribunal to make a supposition based on the fact that the mildew appears to have developed while the Respondents were in occupation. In the Tribunal's view, it would have appeared more legitimate for the Respondents to feel aggrieved that they had to live in the Property with mildew rather than the Applicant framing such a claim as this against the Respondents.

**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**

27 October 2023

**Date**