



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/1161

Re: 52 Fintry Place, Bourtreehill South, Irvine KA11 1JB (“the Property”)

Parties:

Barbara Graham, 15 Moorfoot Place, Bourtreehill South, Irvine KA11 1JP (“Applicant”)

Leonard Property Holdings Limited, Suite A4, Skylon Court, Rotherwas, Hereford KR2 6JS (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Elizabeth Currie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that no order for payment should be made and refused the Application.

Background

1. The Applicant sought an order for payment of £550 in respect of the balance of a deposit paid by the Applicant to the Respondent. The Applicant had lodged Form F along with the following :
 - A private residential tenancy agreement between the Applicant, the Respondent dated 10 and 18 November 2021 and which commenced on 18 November 2021.
 - A screenshot showing a payment of £450 from Safe Deposits Scotland on 20 March 2023.
 - Copy email from the Respondent to the Applicant dated 21 November 2022 stating that check out would take place on 30 November 2022.
 - Photographs of the Property.

2. A Case Management Discussion (“CMD”) took place on 27 September 2023. In advance of the CMD the Respondent lodged a written submission along with the following :
 - A copy of the PRT.
 - A copy certificate from Safe Deposits Scotland showing the deposit of £1000 being protected from 15 November 2021.
 - Copy check in report dated 23 November 2021
 - Copy check out report dated 5 December 2022.
3. Reference is made to the Note of the CMD. The outcome of the CMD was that the Tribunal issued a direction and fixed a Hearing for 19 December 2023. In response to the Direction the Respondent lodged an invoice from Hardie Property Services dated 9 December 2022 for £500, an invoice from Hardie Property Services dated 9 December 2022 for £800 and an invoice from Jade Cuthbert dated 7 December 2022 for £50.

Hearing

4. A Hearing took place on 19 December 2023 by conference call. The Applicant was in attendance. The Respondent was represented by Kirsty Leonard. The Parties confirmed that the tenancy began on 18 November 2021 and ended on 30 November 2022. The Applicant said that she lived in the Property with her two teenage daughters.
5. The Tribunal noted that at the CMD the issues in dispute were noted to be :
 - Whether it was necessary for the Respondent to incur a cost of £50 to clean the oven door and shower screen.
 - Whether the Applicant was instructed at the beginning of the tenancy to use the paint left in the Property to cover any marks at the end of the tenancy.
 - Whether £500 was a reasonable charge for decorating the areas of the Property where the paint was “flashing” or “patchy”.
6. As regards the cost of cleaning, Ms Graham said there were marks on the oven door at the start of the tenancy. As regards the shower, she said she could not see anything wrong with the shower.

7. Ms Leonard referred the Tribunal to the check in report photograph 76 and the check out report page 3 photograph 6. She said that comparing the two evidenced that there were no marks on the oven door at the start of the tenancy and it needed to be cleaned at the end of the tenancy. As regards the shower, Ms Leonard referred the check in report photographs 130 and 131 showing the shower to be clean and to the narrative at page 3 of the check out report which said the shower was not clean. She said there were no photographs of the shower in the check out report. Ms Leonard said that the oven and shower were the only items attended to by the cleaner who charged a minimum fee of £50 to include travel to the Property.
8. Ms Graham said that the marks on the oven were normal wear and tear and the oven did not need to be professionally cleaned. Ms Graham said that the invoice produced did not show a vat registration number and looked like it could have been prepared by anyone. Ms Leonard said she believed the cleaner was a sole trader. She did not know whether she was vat registered.
9. The Tribunal asked Ms Graham about the agreement she reached with Donna Riseborough of the Respondent regarding painting at the end of the tenancy. Ms Graham said the conversation took place at the Property when she was viewing it before taking up the tenancy. She said the Property was painted pale grey throughout. She said Ms Riseborough told her there was spare paint left in the cupboard at the Property which could be used for touching up small marks at the end of the tenancy. Ms Graham said the Property consisted of 3 bedrooms, an upstairs bathroom, a downstairs toilet, a kitchen, living room and hall.
10. Ms Graham said that at the end of the tenancy she went round the Property and applied the paint left at the Property to any small marks that she found. She said that her daughters assisted with applying the paint and she checked this over. She said that in the downstairs cupboard she painted the entire cupboard as the paint was not the same as what had been previously applied. The Tribunal invited Ms Graham to look at clause 37 of the tenancy agreement. She said she was familiar with the clause but that she did not “decorate” she just touched up the marks. She said that if she had been told to paint the entire Property at the end of the tenancy she would have done so. She said that when she left the Property it looked ok. She agreed that the paint did look patchy in the photographs in the check out report.
11. The Tribunal asked Ms Graham about the holes in the banister referred to in the painter’s invoice. She said there had been no holes in the banister. She said she repainted the banister at the top of the stairs and the rail down the stairs.

12. Ms Leonard told the Tribunal that the Respondent would not tell anyone to use the paint left in the Property. She said it was left there for tradesmen. She said she could not comment on the Applicant's conversation with Donna Riseborough as she had not been present. She said that if the light grey paint was put on small patches it will "flash". She referred the Tribunal to the check in report which showed the Property had been painted full for this tenancy throughout. She referred to the check out report page 12 photographs 8,9 and 10 of the kitchen and pages 37-41 photographs 18,19,20 and 21 of the bathroom which showed the paint "flashing".
13. The Tribunal asked Ms Leonard how many walls had the "flashing". She said every room but not every wall. She estimated about 1/3 of all walls. She said she had set out in more detail the extent of the flashing in a communication with the Applicant. The Tribunal noted an email from her to the Applicant dated 21 December 2022. As regards the hole in the banister, Ms Leonard said that the check out report did not have a photograph of the holes in the banister. She said the check in report showed there were no holes at the start of the tenancy. She referred to page 87 photograph 184.
14. The Tribunal asked Ms Leonard about the 2 invoices from Hardie Property Services. She said that the full charge had been £1300 and she had asked the painter to provide 2 invoices as she would not charge the full amount to the Respondent. She said she would only charge the Respondent for the larger areas.
15. Ms Graham said that she understood a deposit could be retained if there had been damage to a property or unpaid rent. That was not the case here. She said the Property was left in good condition.
16. Ms Leonard said she would not expect to be left with damage to the walls after a 1 year tenancy. She said she had not been aware the Applicant was going to do any painting at the Property.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a tenancy agreement which commenced on 18 November 2021.
2. The tenancy came to an end on 30 November 2022.
3. The Applicant paid to the Respondent a deposit of £1000 which was protected by Safe Deposits Scotland from 15 November 2021.

4. £450 of the deposit was returned to the Applicant on 20 March 2023.
5. The door of the oven in the Property was unmarked at the start of the tenancy and was marked at the end of the tenancy.
6. The Respondent incurred a cost to have the oven door cleaned. The minimum fee charged by the cleaner was £50 which covered cleaning the oven and shower.
7. The Applicant was told by Donna Riseborough, then of the Respondent, to use paint left in the Property to cover small marks.
8. The painting carried out by the Applicant at the end of the tenancy was more extensive than covering small marks and left a number of walls with "flashing".
9. The Respondent incurred a cost of £500 to have a decorator paint the walls that had been partly painted by the Applicant.

Reasons for the Decision

17. The tenancy agreement sets out the contractual relationship between the Parties. In terms of clause 17 the Applicant agreed to take reasonable care of the Property. Clause 18 notes that the Respondent is responsible for ensuring the Property meets the Repairing Standard in terms of the Housing (Scotland) Act 2006 but that the Applicant is liable for the cost of repairs where the need for them is attributable to their fault or negligence.
18. In terms of clause 28 the Applicant agrees not to make any alteration to the let property nor to carry out any internal or external decoration without the prior written consent of the Respondent.
19. In terms of clause 37 the Respondent and the Applicant agree that any and all damage caused by the Applicant will be rectified by them and that the Applicant will seek permission to decorate and will only decorate with a professional tradesman and the paint colour chosen.
20. The Respondent referred to Tribunal to the check in and check out reports which evidenced the condition of the Property at the start and the end of the tenancy. The photographs in the reports evidenced that there were no marks on the oven door at the start of the tenancy and that there were marks at the end of the tenancy. The Tribunal considered it was reasonable for the Respondent to instruct a cleaner to clean the oven door. The Respondent's position was that it was also necessary to instruct a cleaner for the shower but the check out report did not contain any evidence that this was necessary other than a brief narrative at page 2. The Tribunal was told that the cleaner charged

a minimum fee of £50 to clean a Property which included her travel to the Property. The Tribunal considered that the sum retained by the Respondent for cleaning the oven was reasonable in light of the cleaner's minimum charge.

21. As regards the painting at the Property, the Applicant told the Tribunal that she had been instructed by Donna Riseborough, then an employee of the Respondent, to use the paint left at the Property to cover any small marks at the end of the tenancy. It was clear to the Tribunal that the painting carried out was more extensive than covering small marks and left the effect described as "flashing". Reference is made to photographs in the check out report number 8,9,10,18,19,20,21,27,47,50,51,52,53,57,58,59,60 and 62. The tenancy agreement was clear that any decorating was to be carried out by a professional tradesman. This had clearly not been done. The Tribunal considered that the sum of £500 charged by Hardie Property Services was reasonable and that the Respondent incurred that cost as the Applicant had not taken reasonable care of the Property.

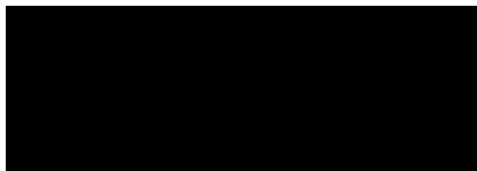
22. The Tribunal determined that the Respondent is entitled to retain the balance of the deposit of £550 to cover the cost of cleaning the oven and painting the areas of the Property where the Applicant had painted patches leaving a "flashing" effect.

Decision

23. The Tribunal determined not to grant an order for payment and refuses the 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.



**Joan Devine
Legal Member**

Date : 19 December 2023