



**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/23/2756**

**Re: Property at 54 Kelvin Gardens, Hamilton, ML3 9NP (“the Property”)**

**Parties:**

**James Doherty t/a Excel Property, 12 St Bryde Street, The Village, East Kilbride,  
G74 4HQ (“the Applicant”)**

**Mr Sorin Eugin Amzoi, 18 Pirnmill Avenue, Motherwell, ML1 3PL (“the  
Respondent”)**

**Tribunal Member:  
George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the application should be decided without a Hearing  
and made an Order for Payment by the Respondent to the Applicant of the sum  
of £1,986.62.**

**Background**

1. By application, dated 11 August 2023, the Applicant sought an Order for Payment in respect of unpaid rent that had become due by, and reimbursement of costs relating to damage caused by, the Respondent. The sum sought was £3,750.62, being £1,260.62 in respect of rent, and £2,825 in respect of repairs, under deduction of the tenancy deposit of £335.
2. The application was accompanied by a copy of a Short Assured Tenancy between the Parties, commencing on 10 June 2016 at a rent of £335 per month, with a deposit of £335, and a Rent Statement showing a debit balance of £135.62 as at 20 July 2022, the monthly rent by then being £375. The Applicant also provided a number of photographs of the interior of the Property, taken on 1 August 2022, and a copy of the tenancy Check-in Report, signed by the Respondent on 10 June 2016. In that Report, it was stated that the carpets and vinyl were in good condition, the WC and basin were new and that every surface in the Property had been painted “where applicable”.

3. The Applicant stated that the Respondent sent him an email on 16 July 2022 (a copy of which he provided) stating that he had moved out. The Applicant received the keys back on 20 July 2022. The Respondent had failed to provide any notice and had left the Property in an unacceptable condition. The Applicant was seeking two months' rent in lieu of notice (£750), loss of one month's rent doing repairs (£375), recovery of repair costs (£2,825), and rent arrears from 10 to 20 July 2022 (£135.62), under deduction of the tenancy deposit received from MyDeposits Scotland (£335).
4. The repair costs were broken down as follows: removal of debris left by the Respondent (£165), replacement of the WC and cracked cistern (£380), cleaning nicotine staining from all surfaces (£90), redecoration of all walls, ceilings and woodwork (£1,100), replacement of damaged carpets (£580), replacement of kitchen flooring (£325), steam cleaning of the oven and hob (£60) and cleaning the Property throughout prior to handover (£125). The costs were all set out in an Invoice from the Respondent to the letting agents dated 25 September 2022.
5. On 30 October 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 20 November 2023.
6. On 16 November 2023, the Respondent made written submissions to the Tribunal. He stated that he had lived in the Property with his mother from 10 June 2016 until 16 July 2022. He accepted that he was liable to pay rent until 20 July 2023, when the keys were received by the Applicant, but thought that he was able to end the lease on giving one month's notice. He could not understand why the Applicant was asking for two months' rent and a further month to get the Property in order. It had been in a bad condition when he received it and he attached photographs which he said, proved it. He said that the carpets were old and the kitchen vinyl looked very bad so he covered it with carpet. He also could not understand the charge of £1,100 for redecoration throughout. The Applicant had not carried out an inspection in 6½ years and that explained why problems with the living room door handle and the toilet were not reported. The toilet had been fixed in 2019 by the Respondent adding waterproof sealant to cover a crack on the inside of the cistern and had not leaked at any time since then.
7. The Respondent accepted a proposed charge of £90 for cleaning nicotine presence and £165 for removal of debris, as well as the rent due from 10 to 20 July 2022.

### **Case Management Discussion**

8. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 11 December 2023. The Applicant was represented by Mr James Doherty. The Respondent was also present.

9. The Tribunal Member advised the Respondent that his tenancy had been a Short Assured Tenancy and that it stated that if it was not ended after 6 months, it continued on a monthly basis until terminated by two months' notice given by either Party. The Respondent accepted this explanation and agreed that he would be liable for two months' rent from 20 July 2022. He did not, however, agree that the Applicant should be entitled to claim a further month's rent.
10. The Applicant told the Tribunal that the cistern was not cracked when the Respondent moved in. He accepted that he had not carried out regular inspections (apart from arranging for Gas Safety inspections), but was of the view that any such issue should have been reported by the Respondent as and when it happened. The Respondent said that the terms of the tenancy agreement required him to report dangerous defects. He said that there were stains on the walls when he moved in, but the Applicant responded that the Check-in Report, which the Respondent had signed, did not support what the Respondent was saying. It did not suggest there were any issues with the carpets, recording that the hall and stairwell carpet and the kitchen vinyl were new and the lounge carpet was in good condition. The kitchen vinyl and carpets had been ruined. The Respondent agreed with the condition of the vinyl but said that it was not his fault. The tenancy had lasted 6½ years, so wear and tear must be expected. The Applicant accepted that some redecoration would be expected after a tenancy of that length, but it appeared that the Property had never been cleaned and it was absolutely filthy when the Respondent left. He referred the Tribunal to the photographs that he had provided.

### **Reasons for Decision**

11. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to enable it to decide the application without a Hearing.
12. The Tribunal considered firstly the question of rent. The Respondent accepted that he was liable to pay rent from 10-20 July 2022 (£135.62). The rent was payable in advance on the 10<sup>th</sup> of each month and his last payment had covered the period to 9 July 2022. The Tribunal also decided that he was liable to pay two months' rent in lieu of notice (£750). The Tribunal noted, however, that the Applicant had received the keys back on 20 July 2023 and held that, whilst it was clear that a substantial amount of work was required to return the Property to a condition in which it could be re-let, the Applicant had had a full two-month period from 20 July 2022 within which to carry it out, as the Respondent had left. The works required were mainly cosmetic and the view of the Tribunal was that it would not be reasonable to require the Respondent to pay an additional month's rent. The position would have been different had the Respondent exercised his right to remain in the Property throughout the notice period.
13. The view of the Tribunal was that the Check-in Report was definitive of the condition of the Property at the commencement of the tenancy, as it had been

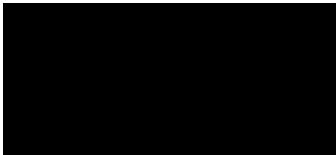
signed as such by the Respondent, so, where the view of the Respondent as to condition differed from that set out in the Report, the terms of the Report were to be preferred.

14. No evidence was led as to how the cistern became cracked. The Respondent's view was that he was only to report dangerous defects. The Tribunal did not agree. Clause 3.16 of the Tenancy Agreement specifically states that he tenant is to give the letting agents "immediate written notice of **any** (Tribunal's emphasis) damage or defects which may occur, particularly defects which may be deemed dangerous." The Respondent should have notified the letting agents in 2019, when he said the crack appeared, and was not justified in waiting for annual inspections, particularly as he knew no such inspections had been carried out since he moved in in 2016. The Check-in Report stated that the cistern was new at the commencement of the tenancy, and the Tribunal decided, on the balance of probabilities, that the Respondent had been responsible for the damage that occurred to it. It was likely that a crack through the surface of a porcelain cistern would not be capable of safe and lasting repair, even though the repair carried out by the Respondent had held good for three years. Accordingly, the Tribunal determined that the Respondent was liable for the replacement cost (£380).
15. The Tribunal agreed from the photographic evidence provided by the Applicant that charging the Respondent for the cost of steam cleaning the oven and hob (£60) was reasonable.
16. The Tribunal also agreed that the photographic evidence indicated that the Property would have required a thorough clean before it could be re-let and that the cost of such a clean should be borne by the Respondent, but noted that it was likely that the cleaning cost would have been higher as a result of the disturbance caused by redecoration and fitting of new carpets and vinyl. The Tribunal thought it reasonable, therefore, that the Respondent should meet two-thirds of the cost (£80).
17. In relation to redecoration and the replacement of carpets and vinyl, whilst the Tribunal accepted that these works were necessary, it had to take into account that the décor and floorcoverings were more than 6 years old when the tenancy ended. It would be expected that, in such circumstances, a landlord would have to consider the impact of fair wear and tear on the decorative state of the Property and the condition of floorcoverings before re-letting it. The Tribunal did not think it reasonable to expect the Respondent to pay the whole costs involved and, whilst accepting that it was not an exact science, decided that the Respondent should be liable for 20% of the redecoration and re-carpeting cost (£336). The photographic evidence indicated, however, that the kitchen vinyl was in a terrible condition, which could not be put down to fair wear and tear and the Tribunal decided that the whole replacement cost (£325) was the responsibility of the Respondent.
18. The Respondent had already accepted that he should meet the cost of nicotine removal (£90) and removal of debris (£165). Adding these to the amounts

determined in Paragraphs 12-17 above produces a total sum of £2,321.62. From this fell to be deducted the deposit of £335. The Tribunal decided, therefore, to make an Order for Payment of £1,986.62 by the Respondent to the Applicant.

### **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.**



**George Clark  
Legal Member/Chair**

**11 December 2023  
Date**