



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/23/0121

Property : 3 Oak Vale, Cupar KY15 5BD (“Property”)

Parties:

Gary Hall, 5 Charles Jarvis Court, Cupar KY15 5EJ (“Applicant”)

Rollos Law LLP, 67 Crossgate, Cupar KY15 5AS (“Applicant’s Representative”)

Anthony Oliva and Marlene Oliva, 60 Crossgate, Cupar KY15 5HS (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £3,669.74 Should be made.

Background

The Applicant sought an order for payment of £13,055.77. The Applicant had lodged Form F along with an inventory of productions containing :

1. a Tenancy Agreement dated 15 March 2019 (“Tenancy Agreement”) at pages 1 - 22
2. photographs of the Property at pages 23-52
3. a breakdown of costs at page 53
4. copy invoices at pages 54-71.

The First Respondent lodged a written submission which was split into three parts headed :

1. response to invoices and receipts which included copy text messages and photographs of the Property

2. response to loss of rent claim
3. additional points to add in response which included copy emails and a copy of the Decision of the Tribunal in case reference FTS/HPC/PR/22/0907.

A case management discussion (“CMD”) took place before the Tribunal on 4 May 2023. The outcome was that the Tribunal fixed a Hearing.

In advance of the Hearing the Applicant lodged a schedule of costs with supporting documents consisting of pages 1 to 111. The Respondent lodged a response to the schedule of cost which consisted of 80 pages which were not paginated.

Hearing

1. A Hearing took place by teleconference on 16 November 2023. The Applicant was in attendance as was Alice Hegarty of the Applicant’s Representative and the Respondent. The Tribunal began by establishing with the Parties that the tenancy commenced on 3 February 2014 and ended on 30 December 2021. By way of background the Applicant told the Tribunal that he had been a joiner for approximately 30 years. He had rented out two properties including the Property. The Tribunal told Parties it would hear evidence from the Applicant and then from the Respondent in respect of each element of the claim. Mr Oliva spoke on behalf of the Respondent.

Kitchen – £1670.31 and Labour - £2790

2. Mr Hall said that the damage included cupboards painted grey, drawers missing, inside of cupboards filthy and doors abysmal. He said the kitchen needed to be ripped out and a new one installed including new cooker and hob. He said he had to decorate the kitchen. He said the windows and doors were also painted grey and had to be repainted. He said the Respondent did not ask for permission to decorate. He said that all decoration was carried out by Mike Barr. Mr Hall replaced the kitchen himself. He said his usual hourly rate is £35/hour.
3. The Tribunal was referred to the first inventory for the Applicant, page 53 which was a summary of costs. It noted a charge for 93 hours of labour at £30/hour which produced a cost of £2790. Mr Hall said that the rate charged was less than his usual rate. He said he had to miss other work to carry out the work at the Property. He said that generally he did the work at nights and weekends. He said his wife kept a note of the time he spent. He said the time amounted to a bit more than two full weeks. Mr Hall was referred to an invoice for £112.66 from William Wilson for a plumbing kit for the sink and to a Howdens invoice for kitchen cupboards and appliances. He said that a breakdown of the Howdens

invoice was not available but it was for the worktop, cupboards, doors, hob and oven. He said there were about 9/10 units. As regards time spent on the kitchen Mr Hall said he estimated 30/40 hours. Mr Hall said that the cabinets could not be replaced without removing and replacing the worktops and tiles. He said that replacing the kitchen was the most cost effective way forward.

4. The Tribunal asked Mr Hall how old the kitchen was. He said it was about 10 years old having been fitted 2/3 years before the Respondent took entry to the Property. He said he would expect a kitchen to have a lifespan of 30/40 years although he would reduce that to 20 years for a rental property.
5. Mr Oliva said that he did not accept that he was liable to meet labour costs. Mr Oliva told the Tribunal that he was given permission to paint. He said he met with Mr Hall in March 2019 to discuss the new PRT and Mr Hall said he was happy for the Respondent to decorate. Mr Oliva said that he told Mr Hall that he wanted to decorate the kitchen, living room and his son's bedroom. Mr Oliva was asked if he specifically discussed with Mr Hall decorating the woodwork and kitchen cabinets. Mr Oliva said he did not.
6. Mr Oliva said that the drawers in the kitchen were loose as at February 2014. He referred to photographs in the documents he submitted on 19 June 2023 ("June inventory") at pages 18 – 20. He said the worktops were not damaged. He said the sink was not leaking and did not need replaced. As regards the oven and hob, Mr Oliva said that the oven belonged to the Respondent. He referred to a receipt at page 22 of the June inventory. He said the original one had been removed as the Respondent did not like it and the Respondent put in their own. He said the gas safety check was carried out on 11 November 2021.
7. As regards replacement of tiles and plasterboard, Mr Oliva said he did not know what damage was referred to. Mr Oliva referred to torn flooring where the washing machine had been removed. He said the original washing machine was replaced by the Respondent with their own. Mr Oliva questioned what Mr Hall did during the 30-40 hours spent working at the Property and he queried whether the rate charged was competitive. Mr Hall said that kitchen fitters would generally charge closer to £50 / hour.
8. Mr Oliva said that the kitchen drawers could have been replaced without replacing the entire kitchen. He said the drawers were falling off due to wear and tear. He said the kitchen was definitely not new when he moved into the Property. He said a drawer was loose at the start of the tenancy and was not fixed.

9. Mr Hall was asked about the permission to decorate and what he thought had been meant. He said he thought that meant painting a wall. He said what was done was not "decorating". He said that the windows and skirting were mahogany and should not have been painted. He said Mr Oliva did not give him specifics about the decorating he would carry out. He said he gave no permission whatsoever and found out about the decorating after the Respondent moved out.
10. Mr Hall was asked about the new cooker installed by the Respondent. He confirmed the old cooker was dumped and he was happy for the new one to be installed as long as the gas safety check was carried out. He said nothing was agreed about what would happen at the end of the tenancy but when he saw the oven he decided he could not leave the oven for hygiene reasons.
11. Ms Hegarty asked Mr Oliva if at any point he told Mr Hall that he would paint the kitchen cupboards and tell him the colour that would be used. Mr Oliva said he did ask Mr Hall for permission to paint certain rooms and Mr Hall did not ask for details. Ms Hegarty asked Mr Oliva if he accepted that it would be reasonable to be clear before painting woodwork or kitchen cabinets. Mr Oliva said he thought it would be up to a landlord to ask for specifics. Ms Hegarty referred to page 5 and 6 of the tenancy agreement and section 11(iii) and asked Mr Oliva if he accepted he did not have consent for the exact work done. Mr Oliva said that the tenancy agreement was not adhered to on either side. He said Mr Hall left the Respondent "to their own devices".
12. Ms Hegarty referred to the drawer being loose in 2014 and asked Mr Oliva if it was raised again. He said he raised it a number of times. Ms Hegarty referred to page 16 of the schedule of costs lodged and asked Mr Oliva if he accepted that the state of the drawer in the picture was such that it should be replaced. He said he agreed the drawer would need replaced but not the cabinets.

Bathroom - £594.84

13. Mr Hall told the Tribunal that when the Respondent moved out the shower was broken and the shower screen had been ripped off. He said the decoration was abysmal, the vanity unit had been painted and the door removed. He said the sink was cracked. He said the toilet and taps had been painted gold. The mahogany window sill and the radiator had also been painted. He said radiators need a particular type of paint. He said he had to replace 3 radiators. He said the grout had been painted over. He said he had not given permission for the painting. Mr Hall referred to pictures of the cracked sink at pages 34 and 35 of the schedule of costs. He said the damage must have been caused by the Respondent.

14. Mr Hall said that he managed to get the paint off the grout and the toilet. He said he replaced the vanity unit and taps. He said a new shower and screen were installed as was a new towel rail. He said everything was replaced apart from the bath and toilet. Mr Hall said that the shower had to be replaced as it was broken and had been leaking. He said he could not get access to the Property to repair it. Mr Hall was asked if the tiles in the bathroom were saved and he said they were. Mr Hall was asked how long he spent working on the bathroom and he estimated 10/15 hours. He was asked if he had thought to tell the Respondent not to paint the hardwood surrounds. Mr Hall said no, he thought decorating meant painting a wall.
15. Mr Oliva said he reported the shower as being faulty in January 2021. He said it was leaking. He said a plumber attended the Property and said the shower needed replaced. He said the screws on the shower screen were loose. He said the Respondent did not break it. He said he disagreed that access had not been given. He said the "paint" on the tiles was not paint but grout which required to be cleaned down. He said the Respondent did not have time to do that before they vacated. He said that the paint used on the toilet was water soluble. He said radiator paint was used on the radiators.
16. Mr Oliva said that the cracked sink was reported to Mr Hall several times. He said the sink was cracked at entry in February 2014 and had been reported in 2016 and 2018. He said he raised it again with Mr Hall in January 2021 and referred to text messages at figures 2.08, 2.10 and 2.11 of the June inventory. He said the doors had fallen off the vanity unit as the sink had been leaking.
17. Mr Oliva said that he needed to paint the window sills as they were mouldy. Mr Oliva said that the shower screen became loose so he removed the screen in December 2020. He said the Respondent did not break anything in the bathroom.
18. Ms Hegarty asked Mr Oliva if he specifically told Mr Hall that he would paint the taps. He said he told Mr Hall he would decorate but Mr Hall did not ask for specifics..
19. Ms Hegarty asked Mr Hall when the sink and shower were installed. He said the sink was about 15 years before the tenancy began and the shower was replaced not long before the Respondent moved in. Ms Hegarty asked Mr Hall about the cracked sink being reported. He said he knew about it but was not aware of the shower screen being loose, the state of the vanity unit or mould. He said at the time the sink was reported he had suffered two bereavements in the family which caused a delay in him dealing with matters. He said the mould was not reported and he could not recall the shower being reported as not

working. Ms Hegarty referred to page 34, 35 and 28 of the schedule of costs which showed the sink.

Doors - £656.51

20. Mr Hall told the Tribunal that at the start of the tenancy the doors were fine. He said they had been in the Property around 20 years. He said that by the end of the tenancy they were ruined. He said they had a varnish finish which should not be painted over. He said there were 8 doors in the Property and all of them had been painted grey. He said it never crossed his mind that the Respondent would do that. He said he tried to remove the paint but the doors could not be salvaged. He said that all internal doors had to be replaced. He said the mirror doors in the back bedroom had to be replaced as they were "off the runners". He said the mirror doors had been replaced perhaps 5 years before the tenancy commenced. He said he also had to replace hinges and handles on the doors. He said he spent 10/15 hours doing this work. Mr Hall was referred to pages 52, 53 and 57 of the schedule of costs.
21. Mr Oliva said that the Respondent painted the doors. He queried why the paint had not been removed or fresh paint applied. Mr Hall said a varnished door should not be painted. Mr Hall said that the Howdens invoice produced was only for the wooden doors replaced. He had lost the invoice for the mirror doors so that was not included in his claim. The Tribunal asked Mr Oliva if he sanded the doors before painting. He said he did not. The Tribunal asked if he looked at any online resources before painting the doors. He said he did not. He said he used masking tape and did not paint over handles and hinges. He said the doors remained serviceable. Ms Hegarty asked Mr Oliva if Mr Hall was aware of the specific work. He said that Mr Hall had given the Respondent permission to decorate as they saw fit.

Plumber - £934

22. Mr Hall said that this cost was to replace radiators, remove and reconnect the sink in the bathroom and kitchen, connect the oven, install the new vanity unit in the bathroom and fit the new taps and shower. He said the work was done by Mark McQueen who he said he trusted as a tradesman.
23. Mr Oliva said that the kitchen sink and cooker had not been damaged. He said the shower had been reported. He said the radiators were still working. The issue was cosmetic. He said he did not know if the price charged was reasonable.

Electrician - £1057.20

24. Reference was made to the invoice at page 67 of the schedule of costs. Mr Hall said that the electrician made good broken switches and sockets which had been covered in paint. He said the electrician also carried out necessary works in the kitchen, which was a new consumer unit and the boiler control, and replaced damaged smoke alarms. Mr Hall said that the faceplate on switches were broken. He referred to a picture at page 54 of the schedule of costs. He said that the work was carried out by Steve Milne who he trusted as a tradesman. He said he told Mr Milne to replace the smoke alarms as he wanted updated alarms and more were needed. He said he did not think the smoke alarms were damaged. The Tribunal noted that the invoice at page 67 included issuing a certificate and asked how much of the invoice related to the new smoke alarms plus the certification. Mr Hall said perhaps 50%.
25. Mr Oliva said that the Respondent added covers to switches for safety. He said the covers fell off over time. He said the sockets were still working. He said only one socket was painted on the landing. He said the light switches were not all painted.

Painter - £2900

26. Mr Hall told the Tribunal that the whole Property needed to be painted at the end of the tenancy. He said the Respondent did not tell him the paintwork they wished to carry out. He said he did not consent to the colours or types of paint used. He said he instructed Mike Barr to do the painting. He was referred to the invoice at page 89 of the schedule of costs. He said he thought the price charged was reasonable. He could not say how many hours Mr Barr had spent but the work took approximately 2 weeks. He said that in the Property there are 2 bedrooms, 1 bathroom, an upper hall, a utility room, a kitchen, a living room, a dining room, a front hall and a hall cupboard. Mr Hall was asked if he usually paints a property at the end of a tenancy. He said painting is not always required and sometimes touching up is required. He said he would normally charge £250-£300 for an end of tenancy refresh. He said the Property was pristine when the Respondent moved in. He said they had painted around furniture and windows and had used 3 different colours on the skirting.
27. Mr Oliva asked Mr Hall when the Property had been painted before the Respondent took entry. He said perhaps 1 year before. Mr Oliva asked if Mr Hall would expect to paint a property after 7 years. He said he would expect to paint 1 wall. He said he was particularly concerned about the windows which had been ruined. Mr Oliva said that when he spoke to Mr Hall in November

2021 he reminded him that the Respondent had painted and he had responded "leave as you think best". Mr Hall said that what had been left was not "best".

28. Ms Hegarty asked Mr Oliva if he had painted the Property himself. He said he had. She asked what sort of paint was used on the windows. He said he used paint suitable for woodwork. She referred him to a photograph at page 79 of the schedule of costs. He said he did not recall painting the skirting. She asked what type of paint was used on the radiators and the toilet. He said radiator paint was used on the radiators and soluble gold spray paint was used on the toilet. Ms Hegarty asked Mr Oliva if he thought it was reasonable for the Applicant to expect the Respondent to return the Property in the same condition as it was at entry. Mr Oliva said that Mr Hall had said the Respondent could decorate. He said he did not accept that the paintwork at the end of the tenancy was of a lesser quality than at entry. Mr Oliva was referred to a photograph at page 96 of the schedule of costs and was asked if it showed paint on the floor. He said he did not know.

29. The Tribunal noted the photographs at page 74, 75, 80 and 81 of the schedule of costs and asked Mr Oliva if he thought the condition of the windows was acceptable. He said that if he had been asked to "tidy up" he may have done. He said that Mr Hall had told him to use his own judgement. The Tribunal asked if he would be happy to move into a property as shown in the photographs. He said "probably not".

Flooring - £1000

30. Ms Hegarty asked Mr Hall about the state of the flooring at the end of the tenancy. He said there were paint marks on the floor and the carpets upstairs were stained. He said the flooring at the front door looked "chewed". He said he had been told the Respondent kept a pet rat which may explain the scratches on the woodwork. He said that when he heard about the rat he decided to replace all the flooring. He said the flooring was spotless at the start of the tenancy. He said the flooring in the living room had been in place for about 2 years before the start of the tenancy whilst the carpets upstairs and the flooring in the kitchen and dining room had been in place for about 1 year. He said a carpet fitter and he had replaced the flooring. He was referred to the invoice at page 108 of the schedule of costs which was the invoice for the flooring. He said the supplier, Mr Gough had used ends of carpet he had in storage which was the cheapest option.

31. Mr Oliva told the Tribunal that the flooring in the bathroom was damaged by leaks from the sink. He said the flooring in the dining room, kitchen and

bedrooms and hallway were subject to normal wear and tear. He said there was a small paint stain in the living room which did not require new flooring.

32. Ms Hegarty referred Mr Oliva to a photograph at page 97 of the schedule of costs and asked if he agreed that showed more than wear and tear. Mr Oliva said he did not agree. Ms Hegarty referred Mr Oliva to a photograph at page 98 of the schedule of costs which showed a hole in the flooring and asked Mr Oliva if a new tenant should expect the flooring not to have holes. He agreed. He said the linoleum probably needed replaced after 7 years. Ms Hegarty referred Mr Oliva to a photograph at page 99 and 100 of the schedule of costs and asked if he accepted the staining shown on the carpets could not be cleaned. He said he did not know if it could be cleaned or not. He said the Respondent had tried to hire a professional cleaner but had been let down.

Other - £377.92

33. Ms Hegarty referred Mr Hall to an invoice at page 109 of the schedule of costs for a wet/dry vacuum. Mr Hall said that he tried to clean the Property himself but he was wasting his time. He said the Respondent had not cleaned before leaving the Property. Ms Hegarty referred Mr Hall to an invoice at page 110 of the schedule of costs for a planer. Mr Hall said this was required to fit the new doors. He said he had to cut and plane the doors to ensure they fitted. He said that although he is a joiner he seldom uses a planer so did not own one. Ms Hegarty referred Mr Hall to an invoice at page 111 of the schedule of costs for paint and WD40. He said he bought the paint for the decorator and the WD40 was used to try to remove the gold paint from the toilet.

34. Mr Oliva said he did not accept he should be liable for the cost of a power tool. He said he expected tradesmen to have their own tools. He noted radiator paint had been purchased but the radiators had been replaced. Mr Hall said he tried to paint them first and noted the paint was only £8. He confirmed that the radiators were still working when the Respondent left the Property.

35. Ms Hegarty asked Mr Oliva if he cleaned the Property at the end of the tenancy. He said that the Respondent cleaned to the best of their abilities. Ms Hegarty referred Mr Oliva to an photograph at page 97 of the schedule of costs which showed a cotton bud. Mr Oliva said it would be obscured when the door was closed.

Loss of rent - £1100

36. Cameron John Durie gave evidence regarding the loss of rent claim. He said that he made contact with Mr Hall around January 2022 with a view to renting the Property and assisting the Respondent to move out of the Property. He said

he moved in March 2022. He said he had wanted in, in January 2022 but Mr Hall had not viewed the Property and when he saw it he decided it was unsuitable and he had to renege on the offer to lease the Property to Mr Durie from January 2022. Mr Durie said he had seen inside the Property when he helped the Respondent to move out. He said he had been in the living room. He said that when he later viewed the Property in January 2022 it was not suitable for him to move in. He said the toilet was painted gold and the tiles had been painted over. He said that switch plates were missing. He said the Property was in a very poor state. He said that once the furniture was removed the poor decoration was visible. He said that the couch had been painted round. He said the floor coverings were dated. He said the Property was in no fit state to move in. He said the wardrobe doors were hanging off and the bathroom was in poor condition. He said this was over and above usual wear and tear. Mr Durie could not recall the proposed rent, he thought maybe £650 per month. Ms Hegarty asked Mr Durie if he would have moved in, in January 2022. He said yes, he had been desperate for accommodation. He said that when he moved in the condition was fabulous. He said the doors had been replaced, there was new linoleum, the window frames had been painted, there was new carpet upstairs, there was a new sink and shower in the bathroom, the bedrooms had been painted and the garden was clean and tidy. Mr Durie said that he knew Mrs Hall, they had previously worked together. He said the Respondent suggested to him that he contact the Applicant.

37. Mr Oliva asked Mr Durie why he thought the décor was dated. He said the Property was not freshly painted and furniture had been painted around. He said that when he looked at the Property in more detail in January 2022 it was not in a fit state for him to move in. He said the carpets were marked and stained and needed to be replaced. Mr Oliva referred Mr Durie to messages in which he referred to moving in February 2022 once work had been done and asked why that changed to January 2022. Mr Durie said he needed to move in January 2022. He said he ended up living in Glenrothes with a friend while he waited for accommodation to be available. Mr Oliva said it was not reasonable for Mr Durie to move into the Property in January 2022 as work needed to be done. Mr Durie said he never actually moved into the Property. He said that his son and family moved in to the Property in March 2022. He said his son became interested in mid-February 2022 as his son was expecting another baby and was living in a property that was not suitable for a family. Mr Oliva noted that the written statement by Mr Durie lodged said he had moved into the Property in March 2022. Mr Oliva asked if that statement was correct. Mr Durie said it was not as he never moved into the Property.

Submissions

38. The Tribunal sought submissions from the Parties. For the Applicant Ms Hegarty referred to the Tenancy Agreement section 11(iii) which related to the costs for redecoration where the tenant had decorated without consent. She said that although the landlord had agreed to the tenant doing some decoration he was not given specific information such as the painting of woodwork and doors, the colours used and the methodology used. She said the landlord would not have consented to what had been done and the tenant should be liable for the cost of redecoration. As regards the bathroom, she said there was no crack in the sink at the start of the tenancy. She said that if the Applicant had known the extent of the damage, the issue could have been resolved earlier. She said that the Tribunal had seen all relevant invoices which showed what was required to bring the Property up to standard for a new tenant to move in. She said that Mr Durie was able to move in January 2022 and pay a rent of £650 but he could not move in. She said that the claim for labour at £30 per hour was reasonable. She said the Applicant had done everything to keep costs down. She said that the loss suffered by the landlord was as a result of damage caused by the tenant.

39. Mr Oliva referred to the loss of rent claim and there being confusion as to whether Mr Durie was going to move in. He said that Mr Hall was aware he needed to do work to the Property such as the sink, drawers and shower. He said he did inform the landlord about issues to be dealt with in the bathroom and kitchen in 2018. He said if Mr Hall had wanted to know more about the decoration he could have asked. He said he did not refuse access to the Property other than once in December 2021. He said the Tribunal needs to take into account fair wear and tear. He said Mr Hall did not carry out inspections. He said that everything was functioning at the end of the tenancy and the Respondent did not damage anything. He said there was no check in report at the start of the tenancy and the Property was not pristine at that time. He said he thought the photographs lodged by the Applicant were not all taken at the same time.

Audio Evidence

40. Towards the end of giving evidence at the Hearing Mr Oliva referred to having reminded Mr Hall that he had decorated the Property and Mr Hall saying "I trust your judgement". Mr Oliva said that Mr Hall also said that he had work to do to the Property. Mr Hall said he did not recall the phone call when that exchange took place. He said he knew he had to deal with the cracked sink and the shower at the end of the tenancy. The Tribunal noted the audio recordings that had been lodged by Mr Oliva in August 2023 and asked if he had sought consent from Mr Hall before

recording. Mr Oliva said that he periodically recorded calls for personal use. He said he did not seek consent. It was apparent that neither the Applicant or the Applicant's Representative were aware of the audio recordings lodged. Having adjourned, the Tribunal considered that it would be appropriate to seek further submissions from the Parties regarding the audio recordings before making a Decision. By email dated 22 November 2023 the Tribunal invited a further submission from the Applicant's Representative in respect of the audio recordings. This was lodged on 27 November 2023. On 13 December 2023 the Respondent lodged a response to the submission from the Applicant's Representative.

Further submission by Respondent

41. By email dated 20 November 2023 the Respondent sought to lodge a further submission. The Tribunal responded advising that it would not consider any further evidence aside from submissions from the Parties regarding the audio recording referred to in the Tribunal's email of 22 November 2023.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement dated 15 March 2019 ("Tenancy Agreement").
2. The Tenancy Agreement terminated on 22 September 2022.
3. In terms of section 18 of the Tenancy Agreement the Respondent agreed to take reasonable care of the let property.
4. In terms of section 30 of the Tenancy Agreement the Respondent agreed not to carry out any internal or external decoration without the prior written consent of the landlord.
5. Notwithstanding section 30 of the Tenancy Agreement, the Applicant consented to the Respondent decorating the Property.
6. In addition to decorating the Property the Respondent painted kitchen cabinets dark grey.
7. The Applicant incurred costs of £417.58 to replace kitchen cabinets that had been painted dark grey.
8. The Applicant is a joiner. £30 / hour is a reasonable rate for the Applicant's labour.

9. The Applicant spent approximately 8.75 hours replacing cabinets in the kitchen.
10. In addition to decorating the Property the Respondent painted the toilet and taps on the bathroom sink gold.
11. The Applicant spent approximately 1 hour removing gold paint from the toilet.
12. In addition to decorating the Property the Respondent painted varnished wooden doors dark grey.
13. The Applicant incurred costs of £656.51 to replace the internal doors in the Property.
14. The Applicant spent approximately 12.5 hours replacing the internal doors in the Property.
15. In addition to decorating the Property the Respondent painted radiators dark grey.
16. The Applicant incurred costs of £311.33 to have a plumber replace radiators.
17. The Applicant incurred costs of £70.07 to purchase replacement radiators.
18. In addition to decorating the Property the Respondent painted wood work including mahogany window surrounds dark grey.
19. The Applicant incurred costs of £1450 to prepare and paint the wood work including mahogany window surrounds.
20. The Applicant incurred a cost of £4.25 to purchase WD 40 to remove gold paint from the toilet.
21. The Applicant incurred a cost of £92.50 to purchase paint for wood work including mahogany window surrounds

Findings in Fact and Law

The Tribunal made the following findings in fact and law:

1. The Respondent breached sections 18 and 30 of the Tenancy Agreement by painting the toilet, kitchen cabinets and woodwork including mahogany window surrounds.
2. The Applicant is entitled to recover from the Respondent the costs incurred by the Applicant as a result of the Respondent's breach of the Tenancy Agreement.

Reasons for the Decision

42. The Tenancy Agreement sets out the contractual relationship between the Parties. The relevant sections are :

- In terms of section 18 the tenant agrees to take reasonable care of the let property.
- Section 19 covers the Repairing Standard and notes that the landlord is responsible for ensuring that the property meets the Repairing Standard.
- The penultimate paragraph of section 19 provides that the tenant will be liable for the cost of repairs where the need for them is attributable to his or her fault or negligence, that of any person residing with him or her, or any guest of his or hers.
- Sections 25 and 27 provide that the tenant agrees to replace or repair (or at the option of the landlord to pay the reasonable cost of repairing or replacing) any of the contents which are destroyed, damaged, removed or lost during the tenancy, fair wear and tear excepted, where this was caused wilfully or negligently by the tenant, anyone living with the tenant or an invited visitor to the let property. Items to be replaced by the tenant will be replaced by items of equivalent value and quality.
- Section 30 states that the tenant agrees not to make any alterations to the let property, its fixtures or fittings, nor to carry out any internal or external decoration without the prior written consent of the landlord.

43. The Respondent occupied the Property from February 2014 to December 2021, a period of some 7 years and 11 months. The Applicant's claim was broken down under a number of headings as detailed in this Decision. A common theme running through a number of the headings related to the decoration carried out by the Respondent in the Property. In terms of section 30 of the Tenancy Agreement the Respondent agreed not to carry out any internal or external decoration without the prior written consent of the Applicant. There was no suggestion that Mr Hall had provided written consent for decoration to be carried out. Mr Oliva's evidence was that Mr Hall had given permission to paint at a meeting between the Parties in March 2019. Mr Oliva said that he told Mr Hall that he wanted to decorate the kitchen, living room and his son's bedroom. Mr Oliva was asked if he specifically discussed with Mr Hall decorating the woodwork and kitchen cabinets. Mr Oliva said he did not. When Mr Hall was asked about the permission to decorate he said he thought that meant "*painting a wall*" and what was done was not "*decorating*". He said he gave no permission

whatsoever and found out about the decorating after the Respondent moved out. This statement was at odds with the earlier evidence given by Mr Hall when he told the Tribunal what he understood decorating would involve. The audio recordings were relevant to the question of permission to decorate. The shorter recording titled "Gary" was a recording of a conversation between Mr Oliva and Mr Hall when Mr Oliva told Mr Hall he would be leaving the Property. Mr Oliva refers to decoration having been carried out and asks if Mr Hall wanted the Property returned to "*bog standard*". Mr Hall replies "*no, if its fine and presentable that will do me...don't worry about putting back to normal, I trust your judgement.*" The Tribunal did not consider the second audio recording titled "convo with Claire" to be relevant. The recording was of a discussion that took place after the tenancy ended and was between the Respondent and the Applicant's wife. None of the evidence suggested that Mr Hall carried out regular inspections of the Property. If he had done he would have become aware of the nature of the works done by the Respondent in the Property at an earlier stage. It seemed to the Tribunal that, on the balance of probabilities consent had been given by Mr Hall for decoration to be carried out in the Property by the Respondent. The Tribunal did however consider that elements of the painting carried out did not properly fall within what would reasonably be considered to be "decorating". Specifically, the Tribunal did not consider that painting a number of kitchen cabinets an entirely different colour to others in the kitchen, painting a toilet and taps on a bathroom sink, painting radiators, painting mahogany window surrounds or varnished wooden doors could properly be described as "decorating". The Tribunal considered each item of the claim in turn.

44. **Kitchen - £1670.31.** The evidence was that the kitchen was 2/3 years old when the Respondent took entry to the Property and therefore approximately 10 years old at the end of the tenancy. There were issues regarding at least one drawer being loose in the kitchen at the date of entry. The oven was replaced by the Respondent in May 2018. A copy receipt was produced. There was no evidence indicating any fault with the sink or other appliances in the kitchen. The photographs lodged did not indicate damage to the worktop. Certain of the cabinets had been painted dark grey. Although permission to decorate appeared to have been given, the Tribunal was of the view that painting kitchen cabinets went beyond what could be described as decorating. There were two invoices lodged in support of this element of the claim. One from Howdens for £1557.65 which Mr Hall said was for the supply of the worktop, cupboards, doors, hob and oven and one for £112.66 for plumbing kit for a new sink. The Applicant also attributed 30/40 hours of his labour to work done in the kitchen. It was unfortunate that the Howdens invoice did not contain a breakdown. The Tribunal did not consider that the cost of fully replacing the kitchen was properly

the liability of the Respondent. The Tribunal did however consider that painting the cabinets dark grey was a breach of the Respondent's obligation to take reasonable care of the Property. In the absence of evidence being presented as regards the breakdown of the cost of the replacement of the various elements in the kitchen, the Tribunal determined that a reasonable amount to be attributed to replacing the kitchen cabinets was 25% of the sum claimed which is £417.58. The estimated amount of labour to instal the kitchen was 30/40 hours at £30 / hour, which the Tribunal considered to be a reasonable hourly rate. Again applying 25% brings to the median hours of 35 brings out a figure of £262.50 for labour. The Tribunal determined that £680.08 of this head of claim is properly the liability of the Respondent.

45. **Bathroom - £594.84.** The Applicant's evidence was that the sink was installed about 15 years before the Respondent's tenancy began and the shower was replaced not long before the tenancy began. He said that at the end of the tenancy the shower was broken, the shower screen had been removed, the sink was cracked and the toilet and taps had been painted gold. Mr Hall's evidence was that he was able to remove the gold paint from the toilet. He said he installed a new shower, shower screen, vanity unit, sink and taps. He said the bath and toilet were not replaced. The photographs lodged by the Applicant indicated that the sink in the bathroom was not cracked at the start of the tenancy. Mr Hall estimated that his labour time replacing the bathroom was 10/15 hours. Mr Oliva's evidence was that he reported the shower as leaking in January 2021. Screenshots of text messages were lodged in support of this. His evidence was that he removed the shower screen as the screws were loose. He said that the cracked sink was reported several times. Mr Hall confirmed the cracked sink had been reported. The Respondent lodged a photograph of the sink dated 8 June 2018 which showed a crack in the sink. The evidence did not indicate that the work carried out to the bathroom at the end of the tenancy were required as result of the Respondent breaching the Tenancy Agreement. The sink was 15 years old at the start of the tenancy and therefore over 20 years old by the end. The crack seems to be normal wear and tear which was reported to the Applicant. A leak in the shower was also reported to the Applicant. There was no evidence that the leak was caused by the Respondent failing to take reasonable care of the Property. Painting the toilet and taps gold was a breach of the Respondent's obligation to take reasonable care of the Property but the Applicant's evidence was that he was able to remove the gold paint. He did not give evidence regarding the length of time that took. A reasonable estimate of time would be 1 hour at the rate of £30 / hour. The Tribunal determined that £30 of this head of claim is properly the liability of the Respondent.

46. **Doors - £656.51.** The Applicant's evidence was that the doors in the Property had been in place for around 20 years at the start of the tenancy. He said that they were varnished doors. His evidence was that there were 8 doors all of which had been painted dark grey. He said he spent 10/15 hours doing this work. The Respondent confirmed that he had painted the doors and had not sanded them before doing so. He said that the Applicant had given him permission to decorate. The Tribunal considered that painting varnished doors went beyond what could reasonably be considered to be "decorating" and was a breach of the Respondent's obligation to take reasonable care of the Property. Copy invoices were produced at pages 62-65 of the schedule of costs totalling £656.51. The Applicant's evidence was that he spent 10/15 hours replacing the doors. Applying the hourly rate of £30 to the median hours of 12.5 brings out a figure of £375. The Tribunal determined that £1031.51 of this head of claim is properly the liability of the Respondent.
47. **Plumber - £934.** The Applicant's evidence was that this cost related to replacing radiators, removing and reconnecting the sink in the bathroom and kitchen, connecting the oven, installing the new vanity unit in the bathroom and fitting the new taps and shower. The Tribunal did not consider that costs associated with the works listed in the kitchen and bathroom were properly the liability of the Respondent aside from the cost of replacing radiators. It was not disputed that the radiators had been painted. Photographs lodged showed that they had been painted a dark grey colour. Although permission to decorate appeared to have been given, the Tribunal was of the view that painting radiators went beyond what could be described as decorating. The Tribunal determined that a reasonable amount to be attributed to replacing the radiators was one third of the sum claimed which is £311.33. In addition the Tribunal noted the cost of purchasing 2 replacement radiators was shown on an invoice from Screw Fix dated 1 February 2022 as being £40.99 and £29.08. The invoice was produced at page 46 of the schedule of costs. The Tribunal determined that in total £381.04 of this head of claim is properly the liability of the Respondent.
48. **Electrician - £1057.20.** The invoice for this head of claim is at page 67 of the schedule of costs. The items listed include supply and fit replacement smoke / heat alarms; carry out electrical works in kitchen, test installation and issue certificate. The Tribunal did not consider that costs associated with those works were properly the liability of the Respondent. The invoice also covered supplying and fitting replacement switches and sockets throughout the Property to replace damaged items. Mr Hall's evidence was that switches were damaged throughout the Property at the end of the tenancy. Mr Oliva said that they remained functional and had been subject to general wear and tear. Two

photographs were lodged by the Applicant at pages 36 and 54 of the schedule of costs. They appeared to be a photograph of the same switch which had paint on it. The Tribunal considered that there was insufficient evidence before the Tribunal to allow it to determine whether the replacement of switches and sockets was required due to a breach of the Respondent's obligation to take reasonable care of the Property. The Tribunal did not consider that any element of this head of claim is properly the liability of the Respondent.

49. **Painter - £2900.** The Applicant's evidence was that the whole Property required to be painted at the end of the tenancy including the woodwork. He said the work took approximately 2 weeks. He said the Property consists of 2 bedrooms, 1 bathroom, an upper hall, a utility room, a kitchen, a living room, a dining room, a front hall and a hall cupboard. The Respondent's evidence was that the Applicant had consented to the decoration being carried out. Mr Oliva did not accept that the paintwork at the end of the tenancy was of a lesser quality than at the start of the tenancy. As noted at paragraph 43 of this Decision, the Tribunal considered that consent had been given by Mr Hall for decoration to be carried out in the Property by the Respondent but the Tribunal took the view that elements of the painting carried out did not properly fall within what would reasonably be considered to be "decorating". The invoice lodged in support of this element of the claim was an invoice from Mike Barr dated 28 March 2022 for £2900 (produced at page 89 of the schedule of costs) which covered applying two coats of emulsion (three coats on dark colour walls) as well as preparing all wood work and apply two coats of undercoat and two coats of finish coat to cover dark grey paint on woodwork. The Tribunal considered that painting mahogany woodwork dark grey fell outwith what would reasonably be considered to be "decorating". The Tribunal determined to attribute 50% of the invoice from Mike Barr to this element of the claim. The Tribunal determined that £1450 of this head of claim is properly the liability of the Respondent.

50. **Flooring - £1000.** The evidence from the Applicant was that the flooring in the living room had been in place for approximately 2 years before the tenancy began while the carpets upstairs and the flooring in the kitchen and dining room had been in place for about 1 year. He said that all floor coverings were replaced at the end of the tenancy. Mr Oliva's evidence was that the flooring in the bathroom was damaged by a leak from the sink and that the flooring in the rest of the Property was subject to normal wear and tear. The Tribunal considered the photographs lodged by the Applicant at pages 90-107 of the schedule of costs which showed the flooring at the start and end of the tenancy as well as after the floor coverings were replaced. The Tribunal considered the photographs lodged by the Respondent at figures 6.1, 6.2 and 6.3 in the June inventory. The tenancy had lasted almost 8 years. The floor coverings had been

in place for between 1 and 2 years before the tenancy commenced. The Tribunal considered that the evidence lodged indicated the wear and tear that could be expected at the end of a tenancy of the duration in this case. The Tribunal did not consider that any element of this head of claim is properly the liability of the Respondent.

51. **Other - £377.92.** This head of claim was made up of 3 invoices. One from Screwfix for £48 for the cost of a wet / dry vacuum and radiator paint. One from Ebay for a Dewalt planer and one from B&Q for WD40 and paint. The Applicant's evidence was that the vacuum was used to try to clean the Property but that he was "wasting his time". He said the planer was used to fit the replacement doors. The WD40 was used to clean the gold paint off the toilet. The Tribunal did not consider that it was reasonable for the Respondent to meet the cost of a vacuum that was unable to carry out the task for which it was purchased or for radiator paint when the Applicant's evidence was that the radiators were replaced. The Tribunal did not consider that it was reasonable for the Respondent to meet the cost of a planer that could be used by the Applicant in his job as a joiner. The cost of the paint on the B&Q receipt was £185. The Tribunal has determined that the Respondent was properly liable for 50% of the cost of painting the Property. The Tribunal therefore determined that the Respondent is properly liable for 50% of the cost of the paint which brings out a figure of £92.50. The Tribunal has determined that the Respondent was properly liable for the Applicant's labour cost for removing the gold paint from the toilet. The Tribunal therefore determined that the Respondent is properly liable for the cost of the WD40 used to remove the gold paint. That is a cost of £4.25.

52. **Loss of rent - £1100.** The Respondent's tenancy of the Property came to an end on 30 December 2021. The Tribunal heard evidence that a third party moved into the Property in March 2022. The Applicant had lodged an email from Cameron Durie dated 8 June 2023 in which Mr Durie said he had wanted to move into the Property in January 2022 but this was delayed until March 2022 as the Applicant was carrying out work to the Property. In the email Mr Durie said "*we moved into the property at the beginning of March 2022*". Mr Durie gave evidence at the Hearing in which he referred to moving into the Property and the condition being "fabulous". As his evidence developed however it was apparent that Mr Durie did not move into the Property at all. His son and family moved into the Property in March 2022. The Applicant required to carry out various works after the Respondent's tenancy came to an end not all of which were necessary because of any failure on the part of the Respondent. The Applicant would not have been able to let the Property to a third party immediately after the Respondent vacated. The Tribunal did not

consider that any element of this head of claim is properly the liability of the Respondent.

53. **Labour - £2790.** The total claimed for labour was 93 hours at £30 per hour. In his evidence the Applicant provided an estimate of the time spent working on the kitchen and replacing the doors. The Tribunal has made a finding regarding labour costs in respect of the kitchen, bathroom and replacing the doors. The only other head of claim where the Tribunal has determined that the Respondent has a liability for cost is painting. No evidence was given that the Applicant spent any labour on that head of claim. In those circumstances the Tribunal makes no finding in respect of the Applicant's labour costs relevant to that head of claim.

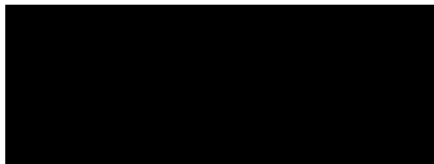
54. **Summary** – The Tribunal had determined that certain elements of certain of the heads of claim were properly the liability of the Respondent. The total of those elements was £3,669.74.

Decision

The Tribunal grants an order for payment of £3,669.74

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 : 28 December 2023