



**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/23/2918**

**Re: 108B Bellevue Road, Edinburgh EH7 4DE (“the Property”)**

**Parties:**

**Hetong Wang, Apartment 6, 154 McDonald Road, Edinburgh EH7 4NN (“Applicant”)**

**Complete Clarity Solicitors, 34 Woodlands Road, Glasgow G3 6UR (“Applicant’s Representative”)**

**Douglas James Hardwick Graeme Scott, 108B Bellevue Road, Edinburgh EH7 4DE and 2F2, 72 Broughton Street, Edinburgh EH1 3SA (“Respondent”)**

**Graeme Scott, 108B Bellevue Road, Edinburgh EH7 4DE and 2F2, 72 Broughton Street, Edinburgh EH1 3SA (“Respondent Representative”)**

**Tribunal Members:**

**Joan Devine (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £129 plus interest thereon at the rate of 5% per annum from 21 May 2024 until payment should be made.**

**Background and Documents Lodged**

1. The Applicant sought an order for payment of £3900 in respect 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 (“PRT”) between the Applicant, the Respondent dated 20 September 2022 and which commenced on 27 September 2022.
  - Copy email from the Respondent’s Representative to the Applicant dated 27 September 2022 confirming receipt of the deposit and rent for the period 1 October 2022 to 31 March 2023.

2. A Case Management Discussion (“CMD”) was fixed for 22 November 2023. In advance of the CMD the Applicant’s Representative sought to amend the application to reduce the sum claimed to £1529 to take account of a payment of £2371 received by the Applicant. The Applicant’s Representative also lodged copy photographs.
3. In advance of the CMD the Respondent lodged a written submission along with the following :
  - A copy of email from the Respondent’s Representative to the Applicant dated 23 June 2023
  - A copy of email from the Applicant to the Respondent’s Representative dated 19 April 2023
  - Screenshots of text messages dated 29 May and 25 June 2023
  - A copy letter dated 25 June 2023 regarding settlement of a dispute between the Parties on the basis of a payment of £2450
  - Photographs of the Property
4. A Case Management Discussion (“CMD”) took place on 22 November 2023 and 4 March 2024. Reference is made to the Notes of the CMDs. Following the first CMD the Tribunal issued a Direction dated 22 November 2023 in terms of which the Respondent was asked to lodge a copy of any invoices evidencing costs incurred by the Respondent in order to rectify damage at the Property following the end of the Applicant’s tenancy of the Property. In response to the Direction the Respondent’s Representative lodged a quote from Transformations dated 7 December 2023 for £350 to respray a table and an invoice from Joey D Reconstruction dated September 2023 for £700 to recover a damaged sofa and £350 to recover a damaged chair. At the second CMD the Tribunal determined to fix a Hearing. Following the second CMD the Tribunal issued a Direction dated 4 March 2024 in terms of which the Parties were asked to lodge a copy of any photographs held evidencing damage to the sofa during the Applicant’s tenancy, any documents on which they intended to rely at the Hearing and a list of authorities on which they intended to rely at the Hearing. Parties were asked to lodge their response to the Direction 14 days before the Hearing to be fixed. On 7 May 2024 the Applicant’s Representative lodged productions consisting of pages 1 to 37 and a list of authorities. On 14 May 2024 the Applicant’s Representative lodged productions consisting of pages 38 to 47 and an updated list of authorities. On 20 May 2024 the Respondent’s

Representative lodged copy messages between the Parties and photographs of the Property. The documents were not paginated.

### **Hearing**

5. A Hearing took place on 21 May 2024 by webex. The Applicant was in attendance and was represented by Scott Stevenson of the Applicant's Representative. The Respondent's Representative was in attendance.
6. Mr Stevenson told the Tribunal that the Applicant accepted there had been damage to a table and an armchair and that it would be right for £700 to be deducted from the remainder of the deposit held. The sum claimed was therefore reduced to £829.
7. The Tribunal asked Mr Scott about the damage to the sofa. He said that the issue was how the damage was sustained. He said it was only when he visited the Property in April 2023 that he discovered the armchair had been chewed by a dog. He said Mr Wang tried to conceal the damage. He said he had been assured the dog was well trained and would be in a crate if left alone in the Property. He said it became apparent that two dogs had been in the Property. He believed the second dog belonged to the Applicant's girlfriend. Mr Scott referred the Tribunal to the photographs attached to his email dated 20 May 2024. He said that the first photograph of the sofa was taken before the tenancy began in September 2022. He said that the second set of six photographs of the sofa showed damage in the form of scratches on the sofa. He said the photographs were taken in late May / early June 2023. He said the scratches were on the two main cushions of the sofa. He said he incurred a cost of £700 to have the sofa recovered. He said the second dog in the Property caused the damage. He said Mr Wang admitted the damage to the sofa.
8. Mr Wang told the Tribunal that the scratch marks were on the sofa when he took entry to the Property. He said the dog chewed the armchair despite being in a crate as the armchair was close to the crate.
9. In response to questions from the Tribunal Mr Scott said that the sofa was around two years old at the start of the tenancy and that there had been a tenant in the Property before Mr Wang. The previous tenant was there for about one year. He said he did not have a receipt to show he had paid the invoice which he had lodged showing a price of £700 to recover the sofa. He said the sofa was sold with the Property in October 2023. He said there was no signed inventory for the Property at the date on which Mr Wang took entry.
10. In response to questions from Mr Stevenson Mr Wang told the Tribunal that he highly doubted that the sofa had been recovered. He said that Mr Scott was not

telling the truth when he said there were no scratches on the sofa at the date of entry and when he said he had paid for the sofa to be recovered.

11. Mr Scott said he felt he had been completely misled by Mr Wang as his dog was not well trained, there was more than one dog in the Property and damage to the Property was concealed.

### **Submissions**

12. Mr Stevenson submitted that it was the Applicant's position that the damage alleged was not caused by him. He said there was no evidence lodged to show that the photographs were taken immediately before the tenancy began. He said the Tribunal had been told that work had been carried out to the sofa but no receipt had been lodged. He said the Tribunal were told the sofa had been sold along with the Property but that raised questions of reliability and credibility. He said the Property could have been sold with the sofa in the scratched state shown in the pictures. He sought an order for payment of £829 plus interest at 8%. His alternative position was that he sought an order for payment of £129 plus interest at 8% if the Tribunal took the view that the Respondent was entitled to retain £700 in respect of damage to the sofa.

13. Mr Scott submitted that the second dog was in the Property regularly. He said it was significant that he had not been told about the dog chewing the armchair. He said the Applicant had admitted to damaging three items in 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 27 September 2022.
2. The tenancy came to an end on 26 May 2023.
3. The Applicant paid to the Respondent a deposit of £3900 on or about 27 September 2022.
4. £2371 of the deposit was returned to the Applicant by a payment of £1 on 11 August 2023, £1000 on 18 August 2023 and a payment of £1370 on 20 September 2023.
5. Damage was caused to a table and an armchair in the Property during the Applicant's tenancy of the Property.

6. The sofa in the Property was not damaged at the commencement of the Applicant's tenancy of the Property.
7. The sofa in the Property was damaged at the end of the Applicant's tenancy of the Property.
8. The Respondent incurred a cost of £700 to recover the sofa in the Property following the end of the Applicant's tenancy of the Property.

### **Findings in Fact and Law**

The Tribunal made the following findings in fact and law:

9. The Applicant failed to take reasonable care of the Property.
10. The Respondent is entitled to retain £700 from the deposit in respect of damage caused to a table and armchair in the Property during the Applicant's tenancy of the Property.
11. The Respondent is entitled to retain £700 from the deposit in respect of damage caused to a sofa in the Property during the Applicant's tenancy of the Property.
12. A sum of £129 requires to be returned to the Applicant representing the balance of the deposit held by the Respondent after deduction of the costs incurred to rectify damage caused.

### **Reasons for the Decision**

14. 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 25 provides that the Applicant agrees that the signed inventory and record of condition is a full and accurate record of the contents and condition of the property at the start of the tenancy. No inventory was, however prepared. Also in terms of clause 25 the Applicant agrees to replace or repair 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. Clause 35 contains a prohibition on pets being kept in the Property other than with the consent of the Respondent. There is a handwritten note beside clause 35 which notes that the Parties have agreed that the Applicant can keep a dog in the Property and will use a crate when the dog is alone.
15. The Applicant accepted that it was appropriate for £700 to be deducted from the balance of the deposit held in respect of damage caused to a table and an armchair. That left in dispute the alleged damage caused to a sofa. Mr Scott's

evidence was that the sofa was unmarked at the start of the tenancy. He lodged a photograph of the sofa which he said was taken before the start of the tenancy. He lodged photographs showing scratch marks on the sofa. He said the photographs were taken shortly after the tenancy ended. He lodged an invoice for £700 in respect of the cost of recovering the sofa. Mr Wang's evidence was that the scratch marks existed at the start of the tenancy and that Mr Scott had not had the sofa recovered at a cost of £700.

16. Mr Stevenson asked the Tribunal to find that the evidence of Mr Scott was not credible or reliable. That is not a finding which the Tribunal is prepared to make. There was no documentary evidence lodged by the Applicant to establish an evidential basis for suggesting that Mr Scott was being untruthful and deliberately misleading the Tribunal. Mr Scott's evidence was consistent with the documents which he lodged. These included an email from him to the Applicant dated 10 June 2023 attaching photographs of damage to the sofa. Mr Scott's position is consistent with those documents. On the balance of probabilities, the Tribunal considered that the damage to the sofa was caused during the Applicant's tenancy of the Property and as a result of his failure to take reasonable care of the Property.

17. The Respondent had retained £1529 of the deposit. The Applicant accepted that £700 should be retained. The tribunal determined that the Respondent was entitled to retain a further £700. That left a balance of £129 due to the Applicant.

18. The Applicant sought interest at 8%. The Tribunal considered that level of interest to be excessive and that 5% was more appropriate in terms of Rule 41A.

### **Decision**

19. The Tribunal grants an order for payment of £129 plus interest thereon at the rate of 5% per annum from 21 May 2024 until payment.

### **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 : 21 May 2024**