



**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/22/4123

Re: Property at 5-2 Earl St, Hawick, TD9 9PZ (“the Property”)

Parties:

**Ms Wei Zheng, Room 407 Building 1, Mudanyuan, Beili, Beijing, 100181, China
 (“the Applicant”)**

**Mr Gagan Deep Sharma, 23 Eildon Road, Hawick, Roxburghshire, TD9 8EU
 (“the Respondent”)**

Tribunal Members:

Ms H Forbes (Legal Member) and Mr G Darroch (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment should be granted in favour of
the Applicant in the sum of £4075.**

Background

1. This is a Rule 70 application where the Applicant is seeking to recover the sum of £6668.15 from the Respondent for alleged damage to the Property, cleaning costs and removal of items, and the sum of £1400 compensation for rent loss during the period in which restoration works were carried out. The sums sought are:
 - (i) Clear property of belongings – £450
 - (ii) Top up electricity – £60
 - (iii) Plastering – £100
 - (iv) Supply and fit new basin taps – £110
 - (v) Supply and fit new smoke alarms – £200
 - (vi) Deep clean – £250
 - (vii) Replace lights – £78.15
 - (viii) Supply and fit kitchen taps and bath restorrias – £230
 - (ix) Flooring – £1590
 - (x) Decoration – £3600
 - (xi) Lost rent – £1400

2. The Applicant lodged a copy of the short assured tenancy agreement between the parties which commenced on 23rd November 2017 and ended on 23rd January 2022. The monthly rent was £350. The Applicant also lodged photographs, invoices, check-in and check-out reports and bank statements.
3. The Respondent's representative lodged written representations by email dated 29th June 2023.
4. A Case Management Discussion ("CMD") took place by telephone conference on 6th July 2023. The Applicant was in attendance. The Respondent was not in attendance and was represented by Mr Oliver, Solicitor. The CMD was continued to an evidential hearing.
5. By email dated 21st August 2023, the Respondent's representative lodged a note of defence.
6. A hearing set down for 9th October 2023 was postponed at the request of the Respondent.
7. A hearing set down for 10th January 2024 was postponed when it became apparent that the Applicant resides in China. Permission was sought from the Government of China through the Foreign and Commonwealth Development Office ("FCDO") to take oral evidence from outwith the United Kingdom.
8. A hearing was convened on 10th April 2024. The hearing was adjourned as no response had been received from the Government of China and the Applicant was not present. The Tribunal issued a Direction to parties.
9. By email dated 15th April 2024, parties were informed that the FCDO had not received a response from the Government of China and the recommendation was that evidence from China should not be taken.
10. By email dated 15th April 2024, the Applicant lodged a response to the Direction, confirming she intended to proceed on the papers before the Tribunal without oral input.
11. By email dated 1st May 2024, the Respondent's representative lodged a response to the Direction, setting out further submissions in respect of the Respondent's position.
12. By email dated 20th May 2024, the Applicant lodged further submissions and productions (31 pages).

The Hearing

13. A hearing took place by telephone conference on 29th August 2024. Both parties were in attendance. The Respondent was represented by Mr Oliver, Solicitor.

Preliminary matters

14. The Tribunal explained that the Applicant could not give evidence, but would be entitled to make a submission based on the evidence heard at the end of the hearing.
15. Mr Oliver confirmed that Mrs Sharma, wife of the Respondent, was present and would give evidence. Although no witness list had been lodged, the Applicant was not opposed to this, and the Tribunal agreed to hear her evidence. Mrs Sharma retired to another room pending giving evidence.
16. The Tribunal asked whether there was any agreement from the Respondent on the level of damage incurred. Mr Oliver said the Respondent accepts there was an element of damage, including writing on the walls, but the sum sued for was above and beyond the costs of restoring said damage.
17. Mr Oliver said no account had been taken of the £500 tenancy deposit which had been relinquished towards the costs of the damage by the Respondent. The Applicant said the deposit of £350 was retained to cover the last month's rent.
18. The Tribunal asked whether there was any scope for settlement discussions, and offered Mr Oliver the opportunity to discuss matters with the Respondent. The opportunity was not taken, and the hearing proceeded.

The Respondent's evidence

19. The Respondent said he had lived in the Property for four and a half or five years with his wife and children. The rent was always paid. Any repairs were notified to the Applicant, including a crack on the living room wall. Inspections took place every six or eight months.
20. At the time the tenancy ended, the Respondent's father passed away in India. The Respondent had to travel to India urgently. He informed the letting agent that he was unable to clear the Property and that he had left bin bags and some furniture, including a cooker which was still in use in the Property.
21. The Respondent said he did not damage any taps, lights, smoke detectors or flooring. He suggested the letting agent may have caused damage after the tenancy ended. It was his position that the Property was clean. The living room carpet had been changed around six months earlier, and he had rented a carpet cleaner six or eight months before the end of the tenancy, and cleaned all the carpets. It was not necessary to replace the hard flooring in the hall, kitchen or bathroom. Dents in the kitchen floor were caused by chairs used in the kitchen.

22. The Respondent said he thought the smoke alarms in the Property were not working during the tenancy as they did not sound at any time when cooking was taking place.
23. The Respondent said his children had drawn on the walls in the living room and their bedroom. They had torn off some wallpaper in the living room. They had not damaged all the walls. The costs claimed for redecoration were too high. Only the living room required to be redecorated.
24. The Respondent was unaware what had caused the red mark showing in the photograph of the bathroom floor (p23/31), and said it could have been cleaned. It was his position that the red mark had not been there at the end of the tenancy and the flooring did not require to be replaced. There was no damage to the hall flooring and it did not require to be replaced.
25. Referred to page 17/31 and the photograph of the living room carpet, the Respondent said he did not think that was the carpet at the end of the tenancy, as it did not reflect the state of the carpet when he left the Property. A new carpet was not required.
26. Referred to page 25/31 and a photograph of damp beneath a window, the Respondent said it was his bedroom and there was always damp in that spot, close to a water pipe. The Respondent regularly cleaned the damp. Asked whether he had reported this to the letting agent, the Respondent said it would have been evident at the time of inspections. The Respondent said the carpet in the photograph would not have required replacement. He was unable to clean this carpet with the machine as the door to the room was too small to allow the machine to be used.
27. Responding to questions from the Tribunal, the Respondent said bagging up and disposing of his belongings should only have cost £100 to £150. He did not think there had been any debit in the electricity meter. He accepted some plastering was required. The Property did not require a deep clean. The Respondent accepted the kitchen wall by the kettle (p21/31) required to be painted. He was unsure what had caused the black staining. The Respondent agreed the children had ripped wallpaper in the living room. The items on the wall on page 28/31 were not stickers and could be removed.
28. The Respondent was unclear as to what had happened with the tenancy deposit as his wife took care of such matters.
29. Responding to questions from the Tribunal, the Respondent said he accepted he was obliged to clear and clean the Property at the end of the tenancy. He would have cleaned the carpets again if his father had not passed away. He could accept there was some plastering and decoration required.

Evidence of Mrs Sharma

30. The witness is the wife of the Respondent and lived in the Property with him and their children. The witness said the tenancy deposit was £500 and she agreed with the Applicant that it could be retained to go towards cleaning the Property. The witness said nothing was left broken, but she accepted the Property was not cleaned. There was no damage to the flooring. The witness did not know what had caused the red mark on the bathroom floor. The marks on the kitchen floor were caused by chairs. The flooring in the hallway was in good condition. The hallway walls were okay. The living room carpet had been replaced six months earlier. The Property was inspected every six or seven months. There was a crack in the living room wall and another in the hall. These had been reported to the Applicant who had said to clean off any mould. The mould had been reported several times.
31. The witness said the taps and lights were not broken. The Property was rented to a friend of the witness after the tenancy ended and nothing had been changed, except the flooring.
32. The witness said the carpets did not require to be replaced. They could have been cleaned. There were no stains. The witness said the family had been tenants with the same letting agent for eleven years. The condition of the Property at the start of the tenancy was medium.
33. The witness accepted some decoration was required. Rubbish had to be removed. It was her position that this was covered by the deposit. The Respondent also left a cooker and sofa that were used after the tenancy ended. The witness said there was no debit on the electricity meter, as it is not possible to have a debit. The witness did not know if the smoke alarms were in working order. They were never tested. It was her position that the cleaning costs were fair. No plastering was required. The witness did not accept that the Respondent should be responsible for paying the rent while the Property was empty for the purpose of repairs.
34. Responding to questions from the Tribunal, the witness said no carpets were changed after the tenancy ended, however, she had only been in the living room of the Property thereafter. The lights had not been changed and she did not think the Property had been fully decorated. Her friend, who rented the Property, had told her there had been no renovation.

Further matters

35. It was noted that the Applicant had mentioned an increase in the sum sought in her most recent submission, stating that she had spent forty hours of her own time restoring the Property and preparing the case. The Applicant confirmed that she had not made an application to increase the sum sought, in terms of the procedural rules, nor had she spent any time carrying out any work to the Property, as she had been in China at the time the tenancy ended. The Applicant said she had made this claim as she had expected the matter

to proceed or settle more quickly. The Applicant said she would accept this was not an applicable cost.

Submissions

The Applicant

36. The Applicant said she wished to rely on her written submissions and evidence. Responding to questions from the Tribunal, the Applicant said only part of the tenancy deposit was lodged with an approved tenancy deposit scheme, as only £150 had been paid to her initially, with the remainder to follow in instalments. There had been no adjudication by the scheme at the end of the tenancy. The Applicant said she relied upon the letting agent when they said the flooring required replacement.

The Respondent

37. Mr Oliver said while the Respondent accepts some culpability, the sum sued for is excessive. No allowance has been made for reasonable wear and tear for a tenancy of this length. The Applicant had carried out a full renovation and the costs incurred were in excess of what was required to put the Property into the condition it was in at the start of the tenancy. Responding to questions from the Tribunal regarding any authority in respect of fair wear and tear or any suggested reduction, Mr Oliver suggested a quarter of what was being sought might be a fair sum for wear and tear. Responding to questions from the Tribunal as to what was meant by the statement within the submissions that the Applicant had not mitigated her losses, Mr Oliver said it was not known if the letting agent got competitive quotes or considered cleaning carpets instead of replacing them.

Findings in Fact

- 38.
- (i) The Applicant is the co-owner of the Property.
 - (ii) Parties entered into a short assured tenancy which commenced on 23rd November 2017 to 22nd May 2018 and monthly thereafter.
 - (iii) The Tenancy ended on 23rd January 2022.
 - (iv) The Respondent's children caused damage to the decor of the Property by drawing and writing on the walls, and by removing wallpaper.
 - (v) The Respondent caused staining to the walls of the Property.
 - (vi) The Property required to be decorated at the end of the tenancy.

- (vii) The carpets throughout the Property required to be replaced at the end of the tenancy.
- (viii) The Respondent failed to comply with his contractual duty in terms of paragraph 15 of the tenancy agreement by failing to take reasonable care of the Property.
- (ix) The Respondent failed to comply with his contractual duty in terms of paragraph 18 of the tenancy agreement by failing to dispose of all rubbish in an appropriate manner.
- (x) The Respondent failed to comply with his contractual duty in terms of paragraph 21(3)(v) of the tenancy agreement by allowing the walls and carpets of the Property to be damaged.
- (xi) The Applicant incurred costs in repairing the damage to the Property.
- (xii) The Applicant is entitled to be reimbursed by the Respondent for the costs incurred.

Reasons for Decision

39.

(i) Clear property of belongings – £450

The Tribunal considered on the evidence before it, and, in particular, the photographs lodged, that the Respondent left sufficient belongings and rubbish bags in the Property to justify the cost sought.

(ii) Top up electricity – £60

The Tribunal was not persuaded that this sum was due. The photographs of electricity meters taken at the end of the tenancy and included in the check-out report did not substantiate this claim. There was a lack of supporting evidence.

(iii) Plastering – £100

The Tribunal considered that this sum was justified, given the damage caused by the Respondent or his children. The Tribunal took into account that the Respondent accepted this sum was due.

(iv) Supply and fit new basin taps – £110

The Tribunal was not persuaded on the evidence before it that the Respondent had caused any damage to basin taps. There was a lack of evidence to support this claim. The Tribunal noted that the check-out report

did not mention this damage and no photographs of alleged damage were included.

(v) Supply and fit new smoke alarms – £200

The Tribunal was not persuaded on the evidence before it that the Respondent had caused any damage to smoke alarms. There was a lack of evidence to support this claim. The Tribunal noted that the check-out report did not mention this damage and no photographs of alleged damage were included.

(vi) Deep clean – £250

The Tribunal considered that this sum was justified, given the unclean state in which the Property was left, as shown in the photographs. The Tribunal took into account that the witness, Mrs Sharma, accepted this sum was due.

(vii) Replace lights – £78.15

The Tribunal was not persuaded on the evidence before it that the Respondent had caused any damage to lights or light fittings. There was a lack of evidence to support this claim. The Tribunal noted that the check-out report did not mention this damage and no photographs of alleged damage were included.

(viii) Supply and fit kitchen taps and bath restorrias – £230

The Tribunal was not persuaded on the evidence before it that the Respondent had caused any damage to kitchen taps and bath restorrias. There was a lack of evidence to support this claim. The Tribunal noted that the check-out report did not mention this damage and no photographs of alleged damage were included.

(ix) Flooring – £1590

The Tribunal considered that the sum of £320 was justified in respect of the living room carpet. The photographs in the check-out report showed considerable staining to the carpet, which was only six months old. The Tribunal considered that the bedroom carpets required to be replaced. The photographs in the check-out report showed considerable staining to the bedroom carpets. The Tribunal took into account that the bedroom carpets were not new at the start of the tenancy, and reduced the amount payable to the Applicant for these carpets by one third, to £395.

The Tribunal was not persuaded on the evidence before it that the Respondent had caused any damage to the flooring in the hallway. There was a lack of evidence to support this claim. The Tribunal noted that the photographs in the check-out report did not show any areas of damaged flooring in the hallway. The Tribunal was not persuaded on the evidence

before it that the Respondent caused any damage to the kitchen flooring. The indentations made by furniture are a result of fair wear and tear and are to be expected in a kitchen where furniture has been placed. The Tribunal was not persuaded on the evidence before it that the Respondent caused any damage to the bathroom flooring. There was insufficient evidence to indicate the source of the red mark on the floor or whether it could have been removed.

(x) Decoration of the Property – £3600

The Tribunal considered that every room except the hallway required to be decorated as a result of damage and staining caused by the Respondent and his family. The check-out report showed no signs of damage to the hallway decor, so the sum of £400 in regard to the hallway was subtracted from the sum claimed. The Tribunal applied a reduction of 20% for fair wear and tear to the remaining £3200, leaving a sum due to the Applicant of £2560 for decoration.

(xi) Lost rent – £1400

The Tribunal did not make any award to the Applicant in respect of lost rent. There was no evidence to explain why it took four months to carry out the works required, or that this delay was attributable to the Respondent. The Tribunal considered that the works required could have been carried out within a much shorter period. The Tribunal considered it is not unusual for a landlord to bear the cost of a void between tenancies, and it is in the landlord's interests to ensure this period is as short as possible.

40. In reaching its decision, the Tribunal noted that much of the alleged damage was not detailed in the check-out report. This was in contrast to the later check-out report from the next tenancy, where items requiring repair are clearly photographed and explained. The Tribunal took account of an email from the letting agent to the Applicant, which, although the date was written in Chinese, appeared to have been written after the end of the tenancy. The letting agent listed some issues discovered at a later stage after check-out. The Tribunal considered there was insufficient evidence to indicate that these issues were not attributable to fair wear and tear, or that they had occurred as a result of damage by the Respondent.
41. The Tribunal made no findings in respect of the tenancy deposit, as there was insufficient evidence to substantiate Mrs Sharma's claim that the deposit was withheld to deal with repairing matters. The Tribunal noted that Mrs Sharma's claim that the deposit amount was £500 was in contrast to the evidence of the Applicant, the tenancy agreement, and the letting agent account, which stated the deposit was £350. The Tribunal did not consider Mrs Sharma's evidence in this regard to be reliable.
42. The Tribunal considered that the Applicant had tried to mitigate her losses. The Applicant was in China and was reliant on the letting agent, who was providing management services. The Tribunal took account of an email

between the Applicant and the letting agent whereby the Applicant asked if the carpets could be cleaned, but the letting agent stated that they were so badly stained, they required to be replaced.

Decision

43. An order for payment is granted in favour of the Applicant in the sum of £4075.

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.

H. Forbes

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Legal Member/Chair

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30.8.24
Date