



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/2772

Re: Property at 67 Thornwood Avenue, Glasgow, G11 7PX (“the Property”)

Parties:

Miss Veronica Gonzalez Acevedo, Miss Saba Rabiee, Flat G/01, 47 Glencoe Street, Glasgow, G13 1YW; 01 47 Glencoe Street, Glasgow, G13 1YW (“the Applicant”)

Mrs Donna Downie, 20c Havelock Street, Glasgow, G11 5JA (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Mary Lyden (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of One thousand one hundred pounds (£1100) against the Respondent in favour of the Applicant

Background

- 1 By application to the Tribunal dated 30 July 2023 the Applicants sought an order for payment against the Respondent in the sum of £1,100, being the tenancy deposit paid to the Respondent in respect of their tenancy of the property. In support of the application the Applicants provided a copy of the tenancy agreement between the parties, photographs of the property, excerpt bank statements, excerpt receipts for purchased items and screenshots of WhatsApp messages.
- 2 By Notice of Acceptance of Application dated 15 November 2023 a Legal Member of the Tribunal with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned for 19th December 2024

and service of the application paperwork was effected upon the Respondent by Sheriff Officers.

- 3 On 7 December 2023 the Tribunal received an email from David Downie. Mr Downie confirmed that he was the Respondent's husband and was acting as her representative in the Tribunal proceedings. He provided a letter of authority from the Respondent consenting to this. Mr Downie further advised that the claims were disingenuous and disappointing. In summary, the Applicants had mistreated the property and were late with rent payments. The property had been in excellent condition and the Respondent had made allowances to accommodate the Applicants. The Applicants had not left the property in a reasonable state of repair and the Respondent had suffered financial loss as a result which exceeded the deposit sum. The Respondent was keen to bring the matter to a close. The Applicants had damaged the windows by applying sealant without permission and the Respondent had to instruct contractors to remove this. The Applicants had left items in the property that the Respondent had to dispose of. The boiler was in proper working condition however a contractor suspected that the Applicants were interfering with some of the valves and connections. Mr Downie advised that the Respondent had a number of counter claims against the Applicants. The Respondent had therefore been entitled to retain the deposit to cover the costs of reinstating the property, which as at the date of the response, stood at £1941.60. The Respondent expected to incur further costs in the region of £2000 based on the quotation for the window reinstatement. Mr Downie submitted documentation in support of his representations which included photographs of the windows, excerpt text messages and a copy email from a contractor with an estimate of the costs of reinstating the windows.
- 4 On 12 December 2023 the Applicants submitted a list of witnesses and a response to the Respondent's representations which included excerpt text messages and photographs of the property. On that same date Mr Downie on behalf of the Respondent submitted an electrical installation condition report and a gas safety certificate.

The Case Management Discussion

- 5 The Case Management Discussion took place on 19 December 2024. The Applicants were present. The Respondent was represented by Mr Downie. The Legal Member explained the purpose of the Case Management Discussion and asked the parties to address the Tribunal on their respective positions and the issues that were the focus of the application, namely whether the Applicants were entitled to the return of the deposit which had been retained in full by the Respondent. The Respondent then explained the deductions that had been made and the reasons for them.

(i) *Windows*

Mr Downie confirmed that the deposit had been retained primarily as a consequence of issues with the windows. Upon attending the property following the Applicants' departure he found every window was sealed

shut. They could not be properly opened within causing damage. A window specialist had come to inspect the windows along with a number of other contractors. A temporary fix had been carried out however further work was required. The Applicants' position was that they had taken advice from a local shop owner who had provided them with appropriate sealant to apply to the windows to retain the heat. Furthermore they had been unable to open the bathroom window throughout the term of the tenancy.

(ii) *Painting/plaster degradation*

Mr Downie stated that the property had not been properly ventilated due to the issues with the windows and that had caused damage to paintwork, with flaking plaster and paint coming off the ceiling. He felt that Applicants had perhaps not appreciated the cold weather in Glasgow and their expectations were too high in terms of heating efficiency. There were also various areas in the property where the paintwork was chipped and damaged. The Applicants stated that they had lived in Glasgow prior to taking on the tenancy and had no issues with warmth. They had asked the Respondent what to do to improve the heating situation but received no suggestions. There was no damage to the paintwork that wasn't already there at the start of the tenancy.

(iii) *Damage to kitchen units and hinges*

Mr Downie stated that there was damage to the units and hinges that required repair. The Applicants position is that there was existing damage when they took on the tenancy. They had asked for it to be fixed but it didn't happen.

(iv) *Replacement oven*

Mr Downie confirmed that the condition of the oven had deteriorated and therefore required to be replaced. The Applicants position was that they carried out a deep clean before they left and left the oven in a reasonable condition.

(v) *Cleaning costs*

Mr Downie stated that the Respondent had incurred cleaning costs to restore the property to its original condition. The Applicants position is that they carried out a major deep clean before moving out of the property.

(vi) *Removal of items*

Mr Downie stated that the Applicants had left items in the property. He gave them a period of six weeks to remove the items however they failed to do so. As a result he had to pay someone to assist him in removing them from the property. The Applicants position is that they were not contacted prior to the items being removed. The items were worth around

£300 and consisted primarily of furniture. They had messaged Mr Downie to ask if the new tenants wanted any of the furniture.

Mr Downie stated that there were costs over and above the deposit that the Respondent had incurred, and was yet to incur, due to the condition of the property at the end of the tenancy.

- 6 The Legal Member noted that the issue in dispute was whether the Respondent had been entitled to make the deductions from the deposit as stated under the terms of the tenancy agreement between the parties. The Legal Member advised that the Tribunal would require to consider a breakdown of the costs incurred by the Respondent together with vouching in the form of invoices and receipts, and evidence of the condition of the property at the start of the tenancy and following the tenant's departure. Such evidence could be in the form of photographs, videos or a check-in and check-out inventory of contents. The Legal Member thereafter determined that the Tribunal did not have sufficient information as at the Case Management Discussion to make a final determination of the application. Accordingly the Legal Member resolved to fix a hearing. A Direction was issued regarding the submission of any further documentary or visual evidence and intimation of witnesses.
- 7 Following the Case Management Discussion both parties submitted further documentary evidence for consideration. The Applicants submitted, by email dated 26 January 2024, copies of emails between the Applicants and the manufacturers of the window sealant, photographs of the property before they moved in and a product data sheet for the window sealant. The Applicants confirmed that they would give evidence at the hearing along with Marina Hubbard.
- 8 On 31st January 2024 Mr Downie on behalf of the Respondent submitted additional documentary evidence in the form of a statement outlining the various breaches of the tenancy agreement by the Applicants, evidence of payment to contractors, a witness statement from David McKean, photographs of the windows following removal of the sealant, and photographs of the property after the Applicants vacated. Mr Downie confirmed that the Respondents' witnesses would be David McKean, who could speak to the issues with the windows, and White Pearl Cleaning, who could speak to the cleanliness of the property after the Respondents vacated.

The First Hearing

- 9 The first hearing took place on 5 April 2024. The Applicants were both in attendance. The Respondent was represented again by Mr Downie.
- 10 As a preliminary matter Mr Downie advised that he was not aware of his responsibility to ensure the two witnesses he had intimated were aware of the hearing date and the arrangements for joining the call. He had believed he would receive something from the Tribunal in this regard. The Tribunal asked whether he would be prepared to proceed in the absence of his two witnesses. Mr Downie stated that he would prefer to have them in attendance, or alternatively

provide a statement from them for the Tribunal to take into account. Mr Downie felt that the witnesses were both speaking to key elements of his defence and he would therefore be reluctant to proceed in their absence.

- 11 Both Mr Downie and the Applicants queried whether the Tribunal could hear the evidence before it that day, and decide thereafter whether it wished to hear further evidence from the witnesses. The Tribunal however considered that it would be preferable for the Tribunal to be in a position to have all evidence before it at the hearing, particularly as Mr Downie had stated his preference for the witnesses to be present. The Tribunal therefore determined to postpone the hearing to allow for Mr Downie to make arrangements for the witnesses to be present. The Tribunal considered it would be in the interests of fairness to allow this, taking into account the fact that Mr Downie was unfamiliar with the Tribunal procedures as a lay person. The Tribunal reiterated that it was the responsibility of the parties to make arrangements to ensure any witnesses they wish to speak at the hearing were aware of the date of the adjourned hearing and the requirement to make themselves available to join the teleconference at the appropriate point.

The Adjourned Hearing

- 12 The second hearing took place on 16th August 2024. The Applicants were both in attendance. The Respondent was not present, nor was she represented by Mr Downie.
- 13 The Tribunal delayed the commencement of the hearing to enable the Tribunal Clerk to attempt contact with the Respondent and Mr Downie by telephone, using the contact details provided, however this was unsuccessful. The Tribunal then carefully considered whether to proceed in the absence of the Respondent under Rule 29 of the First-tier Tribunal (Housing and Property Chamber) Rules of Procedure 2017 as amended.
- 14 The Tribunal noted that notice of the hearing had been given to the Respondent's representative Mr Downie by email on 23 July 2024 to the email address that he had been using to communicate with the Tribunal administration. The Tribunal further noted that he had been present at the previous Case Management Discussion and hearing, had been aware that the hearing had been adjourned, and that the adjournment had been to assist the Respondent in ensuring her two witnesses could be present. However he had failed to attend the adjourned hearing, and had failed to provide any explanation for his absence. The Applicants were in attendance and had their own witness on standby to join the call, and the application had now been ongoing for over a year. The hearing had already been adjourned on one occasion. The Respondent had also had the opportunity to submit representations and documentary evidence which was before the Tribunal. Accordingly, taking into account the Tribunal's overriding objective to avoid delay, so far as compatible with the proper consideration of the issues, the Tribunal determined to proceed with the hearing in the absence of the Respondent.

- 15 The Tribunal then proceeded to hear evidence from the Applicants and their witness Marina Hubbard. For the avoidance of doubt the following is a summary of the evidence and does not constitute a verbatim account.

The Applicants

- 16 Miss Gonzalez primarily gave evidence on behalf of the Applicants, with Miss Rabiee making occasional contributions throughout. Both were consistent with what was shown in the documents they had submitted and they gave their evidence in a straightforward and concise manner.
- 17 Miss Gonzalez advised that she had found the property on Gumtree after returning to Scotland following a gap year to study veterinary medicine. Miss Rabiee was a medical student. The Applicants had offered to pay above market price in order to secure the property, as they had been searching for some time and were not having much luck. They therefore offered an increased rent of £1300 per month as opposed to the £1100 that was advertised. Ms Gonzalez explained that the Applicants were now paying around £940 per month for their current tenancy which was in much better condition.
- 18 Miss Gonzalez explained that the Respondent had not carried out a check-in inventory at the start of the tenancy and therefore nothing had been agreed between with parties in terms of the condition of the property. The photographs produced by the Applicants dated back to the start of the tenancy. Ms Gonzalez further advised that the Respondent had not provided any certification or information regarding the heating, gas or electricity in the property. The Respondent's property had been the Applicants' first tenancy in Scotland and they did not realise that they had to be provided with various documentation until they moved into their current property. They were also unaware of the landlord's duties with regard to tenancy deposits.
- 19 Miss Gonzalez explained that the property was not that clean when they moved in. There was mould in the bathroom and it was not in great condition. There was also mould on the blinds and dirty crockery and cutlery. The rugs were dusty and required a deep clean, as did the window sills. There were latterly some problems with mice. These issues had been highlighted to Mr Downie however the Applicants ended up carrying out the cleaning themselves. Miss Gonzalez confirmed that the property was a two bedroom unfurnished property however when they arrived there were some items of furniture left by the previous tenant including a chest of drawers, dining room furniture and a lamp. The Applicants had spoken with the previous tenant and had agreed to keep some of the items. There were also other items in the property when they took entry including cutlery and crockery. Both Miss Rabiee and Miss Gonzalez stressed that the property was left in a better condition when they left the property than when the tenancy commenced. She and Miss Rabiee would regularly clean the property during the tenancy to make it liveable.
- 20 Shortly after the Applicants took up occupation of the property they noticed a lot of drafts coming into the house. They contacted Mr Downie in November 2022 to

ask if anything could be done. Mr Downie explained that the windows were single glazed and there wasn't anything he could do about the drafts. The Applicants had therefore started looking online for ways to preserve the heat inside of the house. They had to keep the heating on constantly which led to increased energy bills. They had found information online about applying plastic or caulk to the windows to prevent the wind from entering. Ms Gonzalez had then gone to a local hardware store and had spoken to the owner who suggested applying the sealing caulk. From reading the instructions for application it looked to be a reasonable solution. There was nothing hazardous about it. Ms Gonzalez explained that she had asked how the sealant could be removed and understood from reading the product material that this could be done by manual and mechanical means. She did not agree with the Respondent's assertion that the windows would have to be removed. Miss Gonzalez stated that the Applicants had ended up paying around £300 to £400 per month for heating and ultimately they felt they could no longer stay in the property. They had asked Mr Downie on a number of occasions to look at measures to address the heating issues but he had repeatedly said that everything in the property was fine. After the Applicants applied the sealant it had improved things to an extent and became a bit more bearable.

- 21 Miss Gonzalez advised that Mr Downie had not carried out inspections of the property during the tenancy. The Applicants had not seen him at any point, despite the fact he lived nearby. He did not therefore become aware of the sealant on the windows until after the Applicants had moved out. The only contact the Applicants had with Mr Downie at the end of the tenancy was to arrange for the return of the keys. Miss Gonzalez confirmed that they had given notice to leave the property in April 2023 and the tenancy terminated on 3 June 2023.
- 22 Miss Rabiee explained that the Applicants had left some items in the property at the end of the tenancy. They had however specifically asked Mr Downie if he could check with the new tenant to see if they would like to purchase the items. He agreed and said he would be in touch if the items required to be removed. When the Applicants vacated they had thought that the property would be re-let quickly and that the new tenant could therefore consider whether they wished to purchase the items. However Mr Downie had not been back in touch.
- 23 Ms Gonzalez gave evidence regarding the remainder of the deductions made by the Respondent. With regard to the kitchen hinges, this was existing damage that was present when they took on the tenancy. The Applicants had not asked the Respondent to fix them as they were not aware that they required to do this. The hob cooker was missing knobs when they took entry and the oven was black and dirty. Any decorative issues were present at the start of the tenancy.
- 24 Miss Gonzalez stated that the Respondent did not appear to care about the issues raised by the Applicants during the tenancy. She had then retained the entirety of the deposit without justification. The Applicants felt it was more of a "do it yourself" situation, whereby the Respondent would not take any action leaving the Applicants to find solutions. Miss Gonzalez gave an example of asking Mr Downie if she could put nails on the wall, to which he had responded

that the Applicants could “do whatever you want” and that they didn’t need to ask. This gave them the impression that they could do things in the property without requiring his consent. Miss Gonzalez stated that Mr Downie was pleasant to speak to in person, but the tone of his messages were completely different.

Marina Hubbard

- 25 The Tribunal heard evidence from Miss Hubbard who joined the teleconference following the conclusion of the Applicants’ evidence. Miss Hubbard confirmed she was a friend of the Applicants, having met through mutual friends, and she had attended the property on around five occasions. She had noticed the lack of knobs on the hob cooker which she considered to be a safety hazard. They had been that way since the Applicants moved in. The hob could be turned on but only by using the metal bar that stuck out. The property needed a deep clean at the start of the tenancy.
- 26 Miss Hubbard advised that she was reluctant to visit the Applicants at the property as it was cold. Instead she would invite them to her own house which was warmer. She would have to wear a big jacket when visiting the Applicants to be comfortable. She thought that there must be some gaps in the windows as it was so cold. The application by the Applicants of sealant to the windows, along with ensuring the doors to the rooms were closed, had improved the heat retention. Miss Hubbard explained that she had not seen the condition of the property when the Applicants moved out, as she was out of the country. However she had witnessed the Applicants doing all they could to keep the property in a good condition through regular cleaning. Miss Hubbard had also noted various boxes and stuff left by the previous tenants, along with general wear and tear.

Findings in Fact

- 27 The Applicants and Respondent entered into a tenancy agreement in respect of the property which commenced on 4 October 2022.
- 28 The tenancy between the parties was a private residential tenancy as defined by section 1 of the Private Housing (Tenancies) (Scotland) Act 2016.
- 29 In terms of Clause 4.1.2 of the tenancy agreement the Applicants agreed to *“keep the property adequately ventilated and heated and ensure that the furniture is kept in clean and in good condition, ordinary wear and tear accepted”*.
- 30 In terms of Clause 4.2.1 of the tenancy agreement the Applicants agreed not to *“damage any part of the Property or the Furniture”*.
- 31 In terms of Clause 4.2.2 of the tenancy agreement the Applicants agreed not to *“alter the Property or the Furniture in any way”*.

- 32 In terms of Clause 4.2.3 of the tenancy agreement the Applicants agreed not to *“decorate or otherwise mark or paint any part of the Property or the Furniture without consent of the Owner which consent shall not be unreasonable withheld or delayed”*.
- 33 In terms of Clause 11.1 of the tenancy agreement the Applicants agreed to *“vacate the property on or before the last day of the Agreement”*.
- 34 The Applicants paid a tenancy deposit of £1100 to the Respondent.
- 35 The tenancy between the parties terminated on 3 June 2023.
- 36 Following the termination of the tenancy the Respondent retained the tenancy deposit in full.
- 37 The Respondent has incurred costs to date in the sum of £1820.98 in respect of works carried out to the property including painting and decoration, cleaning and electrical services.
- 38 The Respondent did not carry out a check-in inventory at the start of the tenancy.
- 39 The Respondent did not carry out a check-out inventory at the termination of the tenancy.
- 40 No agreement was reached between the parties as to the condition of the property at both the commencement, and termination, of the tenancy.
- 41 The condition of the property at both the commencement, and termination, of the tenancy cannot be established.
- 42 The Applicants applied caulk sealant to various windows in the property to mitigate drafts.
- 43 The Respondent’s representative, David Downie, in response to a verbal query from the Applicants about putting nails in the walls, advised them to “do whatever you like” and confirmed that they did not need to ask again.

Reasons for Decision

- 44 In reaching a decision on the application the Tribunal took into account the application paperwork, written representations and supporting evidence from the parties, the submissions at the Case Management Discussion, and the evidence from the Applicants and their witness at the hearing. The Tribunal was satisfied that it had sufficient information to make a determination on the application. Whilst the Respondent had not given evidence at the hearing, the Tribunal was in receipt of the documentary evidence and submissions made on her behalf by

Mr Downie, along with his submissions at the Case Management Discussion, which clearly outlined her position regarding the application.

- 45 The Applicants in this case seek the return of their deposit. Ordinarily this type of dispute would be adjudicated through the tenancy deposit scheme in which the tenancy deposit has been placed. However in this case the Applicants' deposit was not lodged by the Respondent in a tenancy deposit scheme, therefore it has fallen upon them to lodge this application with the Tribunal to seek repayment of the sum paid.
- 46 The Tribunal was satisfied that the Applicants had paid a deposit of £1100, and that this had been retained by the Respondent in full at the end of the tenancy. That matter was not in dispute. The Respondent has outlined various deductions that she states were justified due to the Applicants' breach of their tenancy obligations which resulted in costs to the Respondent that exceeded the deposit sum.
- 47 Where a dispute arises over a tenancy deposit, the starting point is that the tenant will be due repayment in full unless the landlord can evidence breaches of the tenancy agreement on the tenant's part which resulted in financial loss. The onus is therefore on the Respondent in this case to establish that the retention of the deposit was justified based on breaches by the Applicants of their tenancy obligations. In the view of the Tribunal she has failed to do so.
- 48 The primary matter that the Respondent relies upon to justify the retention of the deposit is the cost of work required following the application of caulk sealant by the Applicants to the windows. Whilst the Tribunal accepted that the Respondent has carried out said work, it also accepted that there had been a conversation between the Applicants and Mr Downie, in which he had told them to "do whatever they liked", further indicating that they did not require to make such requests. The Tribunal found both Applicants to be credible in their evidence at the hearing. They were both consistent in their submissions with the documentary evidence submitted. Ms Hubbard also gave her evidence in a straightforward and factual manner and was consistent with the account of events outlined by the Applicants. As a friend of the Applicants, the Tribunal could only give moderate weight to her evidence but she was helpful in providing additional comment on the condition of the property during the time the Applicants resided there.
- 49 Accordingly, having had that aforementioned verbal consent from Mr Downie, and taken alongside the Applicants' requests for the Respondent to address the drafty windows to no avail, it would have been reasonable for them to conclude that they could take steps to improve the energy efficiency in the property through the application of sealant, which had been done following advice. The Tribunal therefore concluded that they were not in breach of Clause 4.2.2 or 4.2.3 of the tenancy agreement and therefore not liable for the costs incurred by the Respondent in the reinstatement of the windows.

- 50 The Respondent had also sought to make deductions for various other costs including cleaning, painting and decoration, and repair and replacement of various items. Whilst the Tribunal accepts that the Respondent incurred said costs following the termination of the Applicants' tenancy, in the absence of a check-in and check-out inventory the Tribunal cannot make any finding of any breach of the Applicants' obligations under Clauses 4.2.1 or 4.2.3 of the tenancy agreement. The Respondent cannot fully evidence the condition of the property at the start and end of the tenancy. The Tribunal cannot therefore be satisfied that the issues of disrepair arose during the Applicants' occupation of the property, nor can it assess the extent of any cleaning that may have been required at the end of the tenancy when compared against what was carried out prior to the Applicants moving in.
- 51 Finally the Respondent sought to make deductions due to items left within the property. The Tribunal accepted that there were items in the property when the Applicants vacated, however based on the conversation that had taken place between the Applicants and Mr Downie, the Tribunal concluded that it was expected that these items would be offered to the incoming tenant, and that the Applicants would be notified if they required collection. This was confirmed in a text exchange between Miss Rabiee and Mr Downie that had been submitted as supporting evidence by the Applicants. The Tribunal was therefore unable to conclude that the Applicants were in breach of Clause 11.1 of the tenancy agreement.
- 52 The Tribunal therefore found no breach by the Applicants of any obligation under the terms of the tenancy agreement between the parties that would justify deductions from the tenancy deposit. On that basis they are entitled to repayment of their deposit in full.
- 53 The Tribunal therefore made an order for payment in the sum of £1100. The decision of the Tribunal was unanimous.

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.

Ruth O'Hare

28 August 2024

Legal Member/Chair

Date