

**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/23/2141**

**Property: 124 Fleming Way, Hamilton ML3 9QH (“Property”)**

**Parties:**

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

**Sara Walasz, 16 West Main Street, Shotts ML7 5QD (“Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber)  
 (“Tribunal”) determined that an order for payment of £4,890 plus interest  
 thereon at the rate of 5% per annum should be made.**

**Background**

1. The Applicant sought an order for payment of £6,350 plus interest at the rate of 8% from 13 March 2023. The Applicant had lodged Form F along with supporting documents. A case management discussion (“CMD”) took place on 27 September 2023. The outcome of the CMD was that the Tribunal granted an order for payment of £5,440 plus interest at the rate of 5% per annum by Decision dated 27 September 2023. The Respondent sought recall of the Decision dated 27 September 2023 which was granted by Decision dated 13 November 2023. A further CMD took place on 30 January 2024. Reference is made to the Note of the CMD. The outcome was that the Tribunal issued a direction and fixed a Hearing for 8 May 2024. The Hearing fixed for 8 May 2024 was postponed at the request of the Respondent. A Hearing was fixed for 29 August 2024. That Hearing was postponed at the request of the Respondent. A further Hearing was fixed for 16 December 2024.

## **Documents**

2. The following documents were lodged on behalf of the Applicant :

- A Private Residential Tenancy Agreement dated 7 March 2019 which commenced on 14 March 2019.
- A schedule of condition as at 14 March 2019.
- Photographs of the Property taken on 13 March 2019.
- Photographs of the Property taken on 13 March 2023.
- A quotation from Excel Property dated 14 March 2023 for various works totalling £5200.
- A quotation from Excel Property dated 24 March 2023 for various works totalling £590.
- An invoice dated 27 September 2023 from Excel Property for works carried out to the Property totalling £5,440.
- Copy emails between the Parties dated 13 and 14 March 2023.

3. The following documents were lodged on behalf of the Respondent :

- Copy emails between the Parties dated 12,13, 14, 16 and 17 March 2023.
- Copy text messages between the Parties dated 14 May 2020 to 14 September 2020; 18 May and 17 June 2021, 27 December 2022 and 13 March (year not shown).
- Copy emails between the Parties dated 17 June 2021.

## **Hearing**

4. A Hearing took place before the Tribunal in Glasgow Tribunals Centre on 16 December 2024. James Doherty of the Applicant was in attendance. There was no appearance by or on behalf of the Respondent. Mr Doherty told the Tribunal that the tenancy started on 14 March 2019 and ended on 13 March 2023. He said that all of the works covered by his claim had to be carried out as he intended to sell the Property, which has now been sold.
5. The Tribunal noted that the Applicant sought to recover from the Respondent £6350. The Tribunal considered each element of the claim in turn as follows :

6. **Cleaning - £165 plus £145** : At the CMD on 27 September 2023 Mr Doherty had told the Tribunal that the charge of £165 was for the initial clear up and the charge for £145 was for a clean once all repair work had been done. He said there was some crossover and a charge of £210 was more appropriate. He said his position remained the same.
7. **Remove hob and sink - £730** : At the CMD on 27 September 2023 Mr Doherty had told the Tribunal that the Respondent had fitted a metal angle to the worktop in the kitchen which meant all of the worktops were damaged. They had to be replaced. The sink and hob had to be removed and re-fitted. He said his position remained the same.
8. **Fill holes in walls - £295** : At the CMD on 27 September 2023 Mr Doherty had told the Tribunal that the Respondent had fitted a TV to the wall which left holes following removal. He said there were a lot of holes in the walls. The wet plaster referred to was caused by water in the bathroom not draining properly in the wet floor system which the Respondent had interfered with. He said that the plaster came away and had to be redone.
9. **Supply and fit ceiling pendant in front bedroom - £40** : At the CMD on 30 January 2024 the Respondent agreed this item was her liability.
10. **Remove damaged glass in sunroom and renew - £140** : Mr Doherty told the Tribunal that the single glazing in the sunroom was damaged. The Tribunal noted the schedule of condition stated there was no damage to glazing at the start of the tenancy. The Tribunal noted the photographs lodged which had been taken at the end of the tenancy and showed the glass was cracked.
11. **Remove damaged vinyl flooring and fit new - £330** : At the CMD on 30 January 2024 the Respondent agreed this item was her liability.
12. **Works in bathroom - £1770 and £445** : Mr Doherty told the Tribunal that the bathroom in the Property had a wet floor system. He said that the Respondent ruined the wet floor system by lifting the vinyl and plywood then replacing with inappropriate materials. This meant the water did not drain into the central drain which is required for a wet floor system. He said that this caused dampness in the bathroom wall. He said that he had thought the basin pedestal and shower screen could be re-used but the pedestal had been removed and the shower screen was chipped. This meant additional costs of £445 were incurred to replace the shower screen at a cost of £385 and pedestal at a cost of £60. Mr Doherty referred to the photographs lodged which showed the flooring in the shower area had been replaced.

13. **Painting - £1590** : Mr Doherty told the Tribunal that the Property required to be decorated throughout. He said that the Respondent had decorated the Property without his consent. He said that in some rooms the Respondent had painted round furniture. At the CMD on 27 September 2023 he told the actual costs were £250 less than the quote lodged.
14. **Tidy garden, empty bins - £140** : Mr Doherty told the Tribunal that the Respondent had left the bins full of rubbish that the council would not collect as it was in the wrong recycling bin. The Applicant had to arrange for removal.
15. **Two months of mortgage payments - £460** : Mr Doherty told the Tribunal that the works to the Property required after the Respondent left had taken more than two months. He said he accepted that was not all the Respondent's fault and was partly due to contractors not turning up and the difficulty in getting contractors. He said it was unfair that the sale of the Property was delayed as he had to carry out repairs to the Property which were required because the Respondent did not leave the Property in an appropriate state of repair.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement dated 7 March 2019 which commenced on 14 March 2019 ("Tenancy Agreement").
2. The tenancy ended on 13 March 2023.
3. The Respondent paid to the Applicant a deposit of £550 at the start of the tenancy.
4. The deposit was paid to the Applicant by MyDeposits at the end of the tenancy.
5. The Applicant applied the deposit to the sum claimed.
6. In terms of section 17 of the Tenancy Agreement the Respondent undertook to take reasonable care of the Property and agreed to pay a reasonable sum in compensation for any damage to the structure or decoration of the Property caused by the Respondent and to replace or make good or pay a reasonable sum in compensation for all breakages, losses and damage to the contents which may happen during the tenancy, fair wear and tear excepted.
7. In terms of section 25 of the Tenancy Agreement the Respondent accepted the Property as satisfactory in all respects and agreed to keep the Property and the contents in good, clean, tenantable order and repair. The Respondent also

agreed that the inventory and record of condition to be supplied was a full and accurate record of the contents and condition of the Property at the start of the tenancy.

8. In terms of section 25 of the Tenancy Agreement the Respondent undertook not to remove from the Property any of the Applicant's fixtures or fittings and to replace or repair (or pay the reasonable cost of repairing or replacing) any 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 Respondent.
9. In terms of section 28 of the Tenancy Agreement the Respondent undertook not to carry out any decoration without the prior written consent of the Applicant.
10. In terms of section 30 of the Tenancy Agreement the Respondent undertook to maintain the garden in a reasonable manner throughout the tenancy
11. The Applicant incurred a cost of £210 to clean the Property at the end of the tenancy.
12. The Applicant incurred a cost of £730 to replace damaged worktops in the kitchen of the Property.
13. The Applicant incurred a cost of £295 to fill in holes left in the Property and to re-plaster the wall on the upper floor of the Property which had been made damp by water not draining from the bathroom wet floor system
14. The Applicant incurred a cost of £40 to replace the ceiling light in the front bedroom of the Property.
15. The Applicant incurred a cost of £140 to replace damaged glass in the sunroom of the Property.
16. The Applicant incurred a cost of £330 to replace damaged vinyl in the sunroom of the Property.
17. The Applicant incurred a cost of £1770 to rectify the damage caused to the wet floor system in the bathroom of the Property.
18. The Applicant incurred a cost of £385 to replace the damaged shower screen in the Property.
19. The Applicant incurred a cost of £60 to replace the missing washbasin pedestal in the Property.

20. The Applicant incurred a cost of £1340 for painting and decorating the Property.
21. The Applicant incurred a cost of £140 to clear the garden and bins at the Property.

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

The Tribunal made the following findings in fact and law:

1. The Respondent breached the Tenancy Agreement by failing to take reasonable care of the Property, by removing a light fitting and washbasin pedestal from the Property, by decorating the Property without the consent of the Applicant and by failing to maintain the garden of the Property.
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**

16. The Tenancy Agreement sets out the contractual relationship between the Parties. Clause 18 notes that the Applicant is responsible for ensuring the Property meets the Repairing Standard (in terms of the Housing (Scotland) Act 2006) but notes that the Repairing Standard does not cover work for which the tenant is responsible due to their duty to use the Property in a proper manner.
17. In terms of clause 17 of the Tenancy Agreement the Respondent undertook to take reasonable care of the Property and agreed to pay a reasonable sum in compensation for any damage to the structure or decoration of the Property caused by the Respondent and to replace or make good or pay a reasonable sum in compensation for all breakages, losses and damage to the contents which may happen during the tenancy, fair wear and tear excepted.
18. In terms of section 25 of the Tenancy Agreement the Respondent accepted the Property as satisfactory in all respects and agreed to keep the Property and the contents in good, clean, tenantable order and repair. The Respondent also agreed that the inventory and record of condition to be supplied was a full and accurate record of the contents and condition of the Property at the start of the tenancy.
19. In terms of section 25 of the Tenancy Agreement the Respondent undertook not to remove from the Property any of the Applicant's fixtures or fittings and to replace or repair (or pay the reasonable cost of repairing or replacing) any

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 Respondent.

20. In terms of section 28 of the Tenancy Agreement the Respondent undertook not to carry out any decoration without the prior written consent of the Applicant.
21. In terms of section 30 of the Tenancy Agreement the Respondent undertook to maintain the garden in a reasonable manner throughout the tenancy
22. At the CMD on 30 January 2024 the Respondent accepted that the cost of £40 to supply and fit a ceiling pendant in front bedroom of the Property was her liability as was the cost of £330 to remove and replace damaged vinyl flooring in the sunroom of the Property.
23. At the CMD on 30 January 2024 it had been suggested that the works covered by the Applicant's claim were properly works that were the obligation of the Applicant as Landlord. The documents lodged on behalf of the Respondent in support of that indicated that the need for certain repairs was notified by the Respondent to the Applicant but the repairs in those communications were not the same as the repairs which formed the subject matter of the claim made in the application.
24. The Tribunal considered the photographs lodged by the Applicant along with the quotation for works and the final invoice for work carried out which totalled £5,440. The Tribunal also considered the oral submissions from the Applicant in which he explained the damage at the Property and the works which required to be carried out to rectify the damage at the end of the tenancy. On the basis of the evidence presented it was apparent that the Respondent had failed to comply with her obligations in terms of the tenancy agreement and that the Applicant had incurred costs of £5,440 as a result. The Tribunal was not content that a sum equivalent to two months mortgage payments was incurred as a result of breach of contract on the part of the Respondent.
25. At the CMD on 30 January 2024 the Applicant told the Tribunal that the deposit paid by the Respondent at the start of the tenancy had been held by MyDeposits and was paid to him at the end of the tenancy. He said that he applied the deposit to his overall claim. The Applicant confirmed this in an email to the Tribunal dated 14 March 2024. The invoice from Excel Property for £5,440 itemised each of the works that had been carried out and constituted the vouching for the Applicant's claim. From this sum the deposit requires to be deducted leaving a balance due of £4,890.
26. The Tribunal determined that 5% was a reasonable rate of interest.

## **Decision**

27. The Tribunal grants an order for payment of £4,890 plus interest thereon at the rate of 5% per annum.

### **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: 16 December 2024**