



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 Private Rented Tenancies (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/4157

Property at 36 Ashton Road, Inverness, IV2 3UE (“the Property”)

Parties:

Mr Timothy McKeggie, Mrs Patricia McKeggie, Blackstand, Fortrose, Ross-Shire, IV10 8SW (“the Applicant”)

Dr Essameldeen Abdalla, 9 Seamount Road, Aberdeen, AB25 1DY (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ann Moore (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order for the sum of £2428.96 should be granted in favour of the Applicants.

Background

- 1. The Applicant seeks a payment order in relation to the cost of re-instating the property at the end of the tenancy. A tenancy agreement, check in report, checkout report, invoices and quotes were lodged with the application.**
- 2. The application was served on the Respondent and both parties advised that a CMD would take place by telephone conference call on 14 March 2024 at 2pm. Prior to the CMD, both parties lodged submissions.**
- 3. The CMD took place on 14 March 2024. The Applicants were represented by Ms Black. The Respondent participated.**

4. The Legal Member asked for clarification of the sum being claimed and how this had been calculated. Ms Black referred to the documents lodged and said that the total cost of re-instatement was £3960.70. This comprised the re-carpeting cost of £1420.70, the handyman costs for the garden and re-decoration of £2240 and the cleaning cost of £300. From this the deposit of £800 had been deducted as well as the cost of painting the ceilings at the property, as the Respondent was not responsible for this. The total sum claimed is £2,710.70. The Tribunal noted that a check out report with photographs had been submitted along with vouchers for the costs incurred. The Applicant also submitted an invoice for work carried out to the property before the tenancy started, including decoration and gardening.
5. Dr Abdalla told the Legal Member that he accepted that the property needed to be painted as his children had marked the walls but that the master bedroom should be excluded as the damage was due to a leak that he reported. He also disputed the gardening and re-carpeting. He said that the evidence lodged shows that the grass had been cut in September 2021, before he moved into the property in December 2021. He left the garden in a similar condition to how it was when he moved in. He said that he had arranged for the carpets to be professionally cleaned. He does not think they required to be replaced and does not believe that they were, as when the property was re-advertised the carpets looked unchanged. Dr Abdalla said that the property was professionally cleaned so he does not accept this charge but was happy to leave that for the Tribunal to decide as it is subjective.
6. The Legal Member noted that part of the claim is disputed and advised parties that the application would proceed to a hearing to be conducted by telephone conference call. The parties were advised that:
 - (a) If they wished to lodge further documents, they should do so no later than 14 days before the date of the hearing.
 - (b) The Applicant should consider getting a breakdown from the handyman in relation to the re-decoration costs.
 - (c) If parties wished to call any witnesses, their names and telephone numbers should be submitted to the Tribunal no later than 7 days before the hearing.
7. The Tribunal noted that the matters to be determined at the hearing were:-
 - (a) Did the master bedroom require to be decorated because of damage or neglect by the Respondent or was the damage due to water ingress for which the Respondent was not responsible?
 - (b) How much did the re-decoration of the master bedroom cost?
 - (c) Did the Applicant require to pay the sum of £300 to have the property cleaned before it was re-let?

- (d) What was the condition of the garden at the start and end of the tenancy and did the Applicant require to pay for gardening work to be carried out to re-instate the garden?
 - (e) Had the Applicant replaced the carpets at the property and, if so, were replacement carpets required because of damage caused by the Respondent?
8. The parties were notified that a hearing would take place on 24 July 2024. This was postponed at the request of the Respondent, as he was out of the country. The parties were notified that a hearing would take place by telephone conference call on 21 November 2024. The Applicants were again represented by Ms Black, the letting agent. The Respondent participated. The Tribunal also heard evidence from Ray McKay who runs a business called Ray's Property Maintenance.

The Hearing

9. At the start of the hearing, Dr Abdalla confirmed that he was still disputing the re-decoration of the master bedroom. He said that the hall/lounge was also in dispute. He also confirmed that he disputed the cleaning, gardening and re-carpeting costs.

Ms Black's evidence

10. Ms Black told the Tribunal that she had carried out both the check in and check out inspections and had prepared the inventories and taken the photographs. The Legal member noted that the photographs in the check out inventory were dated but did not identify the room/item being photographed. Ms Black went through the inventory and stated the following
- (a) Photograph 1 is the lounge. 2 to 6 are the walls in the lounge.
 - (b) 7 and 8 are the windowsills in the lounge.
 - (c) 9 and 10 are the fireplace and fire.
 - (d) 11 to 14 are the lounge carpet.
 - (e) 15 is the kitchen. 16 and 17 are the hob and oven. The oven and hob were old so there was no charge applied
 - (f) 18 is a damaged kitchen unit.
 - (g) 19 is the inside of a kitchen cupboard.
 - (h) 20 is the extractor fan. The filter had been removed but not replaced.
 - (i) 21 and 22 are kitchen cupboards.
 - (j) 23 to 26 are the back garden.
 - (k) 27 and 28 are kitchen worktops. The lamination was off, much worse than had been the case at entry.
 - (l) 29 and 30 are the back door and wall next to it.
 - (m) 31 is the banister and stair.
 - (n) 32 to 34 are meter readings.
 - (o) 35 to 39 are the front garden.
 - (p) 40 to 48 are the bathroom.

- (q) 49 to 51 are the walls in the upper hall
- (r) 52 to 54 are the hall carpet
- (s) 55 and 56 are walls in a bedroom.
- (t) 57 to 59 are a damaged louvre door in a bedroom
- (u) 60 is a wall where attempts have been made to paint a wall in a bedroom.
- (v) 61 to 66 are the carpets in the bedrooms. 61 and 62 are from the room with the damaged louvre door. 63 and 64 are from the other front bedroom. 65 and 66 are the back bedroom.
- (w) 67 to 74 are walls in the master bedroom
- (x) 75 is the garden shed.

11. Ms Black then referred to the check in photographs and said that these accurately show the condition of the property at the start of the tenancy. The property had been fully re-decorated and re-carpeted before the Respondent moved in. When asked about the water damage to walls in the master bedroom, Ms Black said that this was a small area, and it had dried out. She added that the Applicant should not be prevented from recovering the cost of decorating this bedroom because of this small section. The work had all been necessary. The Tribunal noted that the Applicants had only provided the estimate for the re-carpeting. Ms Black said that she was sure that the invoice had also been submitted and added that it was dated 1 December 2023 and was for less than the estimate – £1238.96.

Ray McKay's evidence

12. Mr McKay confirmed that he carried out work at the property both in September 2021 and again in September 2023. He said that he works for a number of companies and Scottish Highland Property Services is one of his customers. He said that he recalled doing the work both before and after the Respondent's tenancy. The whole house had been re-decorated by him. When he returned in 2023, the walls were dirty and there were drawings and food stains on them. Someone had also tried to repaint a back bedroom with white paint over the magnolia. He recalled a water stain on a bedroom wall because he had to seal it before he painted. In the hall there were marks on the walls from crayon or pencil. The whole house had to be re-painted. There wasn't a wall that wasn't marked. In response to a question about whether some of the painting was needed due to wear and tear, Mr McKay said that this was not the case as the walls had been painted only a year before. It should have lasted a few years. He also said that his employee did the garden, including trimming back the bushes. The garden had also been done in September 2021, at the request of the letting agent. In 2023, the front bushes were overgrown, the grass had not been cut regularly, the back grass was long, and he recalls having to purchase a new nylon wire for the strimmer.

13. Ms Black asked Mr McKay whether he could recall the condition of the carpets. He replied that he was aware the property had been re-carpeted at the start of the tenancy because he had spoken to the carpet fitter at the time. When he went back to price the work in 2023, the carpets were in very poor condition. They were stained and there were burn marks. All the carpets were in this

condition. In response to a further question from the Tribunal Mr McKay said that the level of cleanliness was also very poor.

Further evidence from Ms Black

14. The Tribunal adjourned for ten minutes to allow Ms Black to submit the carpeting invoice. This was emailed and circulated to the Tribunal and the Respondent. It is for £1238.96 and is dated 1 December 2023. Ms Black stated that the contractor carried out the work and issued this invoice to her company. She also confirmed that the cleaning contractor was instructed and carried out the cleaning work for £300. This was the lower of the quotes she had obtained.

Dr Abdalla's evidence.

15. Dr Abdalla told the Tribunal that he accepts the 2021 check in report as an accurate reflection of the condition of the property at the start of the tenancy. However, he disputes the accuracy of the checkout report and photographs. He said that it is easy to make a small mark look like a big one by zooming in when you take a photograph. He wishes that he had taken his own photographs. Although he accepts the bathroom photographs as accurate, the lounge/ hall downstairs is disputed. In relation to the kitchen, this was a mess because the whole ceiling fell down, and the walls were damaged. This was due to a leak from the bathroom. The damage to the walls was supposed to be repaired but it didn't happen. In relation to the master bedroom, there had been a leak from the roof. There was an issue with the extractor in the bathroom. To sort it properly would have involved a lot of work.

16. Dr Abdalla said that he accepted that some painting was needed because of his children. He said that he was surprised that the Applicants claimed that new carpets were needed because they were new at the start of the tenancy and had been left in a reasonable condition. Furthermore, he had arranged for them to be cleaned. He is unable to provide evidence of this as he found the carpet cleaner online and paid him cash. The cleaner shampooed the carpets, and Mr Abdalla happy with the result. The cleaner also cleaned the house but not the bathroom. In relation to the garden, he disputes the claims. The garden was done regularly. Someone used to come to the door every 3 months or so and would cut the grass, front and back, but he did not do the bushes or weeding. Dr Abdalla said that he moved into the property in December 2021 and the grass was not tidy. He contacted the letting agent and they provided a lawn mower. In response to questions from the Tribunal Dr Abdalla said that he had attempted to paint the children's bedrooms before they moved out. He then contacted a decorator who agreed to do the work but then cancelled at the last minute and there was no time left to re-arrange.

17. Dr Abdalla told the Tribunal that the letting agent did not inspect the property at any time during the two years that he lived there. He said that inspections are regularly carried out at his current property. He said that if they had inspected and identified issues earlier, he could have dealt with them. He had already moved out by the time they raised concerns. He also said that the items in the front garden were removed the day after the photographs were taken.

The items in the shed were not as his wife was unable to get keys but there were only a couple of small items.

Final remarks

18. In response to Dr Abdalla's evidence, Ms Black said that the kitchen ceiling did not fall down. There was a crack in it and the contractor attended and replastered the ceiling. She said that there had been concerns about condensation in the bathroom. The extractor was not on although it was evident that the shower had been recently used, and the window was closed. The extractor was replaced. She said that she had been inside the property on a couple of occasions during the tenancy, but it was difficult to arrange inspections because Dr Abdalla insisted he had to be there but his working hours made that difficult. She said that the final cut of the lawn before the winter had been carried out in September 2021. In the spring, Dr Abdalla said that he wanted a lawn mower to do the garden himself rather than hire a gardener. Dr Abdalla stated that he received no emails requesting an inspection. The only visits to the property were when he reported a fault. He said that the kitchen ceiling was almost collapsing when the contractor attended. He prodded it with a stick, and it collapsed causing a lot of damage.

Findings in Fact

19. The Applicant was the tenant of the property between 3 December 2021 and September 2023.
20. Prior to the start of the tenancy the property had been cleaned to a high standard. The whole property had been repainted and re-carpeted and gardening work had been carried out.
21. After the Respondent had vacated the property in early September 2024, the letting agent carried out an inspection and prepared an inventory with photographs.
22. During the Respondent's occupation, the internal walls at the property were marked and damaged. The damage included drawings and food stains.
23. During the Respondent's occupation the carpets at the property were marked and damaged.
24. The Respondent failed to maintain the garden to a reasonable standard during the tenancy.
25. The Respondent failed to leave the property in a clean and tidy condition at the end of the tenancy.

26. The Applicant required to instruct contractors to re-instate the property before it could be re-let. The sum paid by the Applicants to contractors was £3778.96

Reasons for Decision

27. The Tribunal notes that the Respondent signed a standard model PRT which includes the usual provisions about taking care of the property, keeping it clean, not causing damage and maintaining the garden. The Respondent does not dispute that the Applicant is entitled to recover the cost of re-instatement where this was caused by his failure to comply with the tenancy terms and conditions. However, he disputes the claim on the grounds that some of the damage was not caused by him, but was due to leaks and water damage, and that some of the charges for cleaning, decoration, re-carpeting and gardening were not required.

28. The Tribunal found the Applicant's witnesses to be generally credible and reliable. Ms Black is clearly an experienced letting agent. She was directly involved in the management of the property from the start of the tenancy until it ended. Her oral evidence was consistent with the documents lodged. Mr McKay did not have copies of his estimates and invoices in front of him but his recollection of the condition of the property and the work carried out was generally consistent with these documents and with the other documentary evidence before the Tribunal. He appeared to mix up the bedrooms and spoke of the pre-tenancy work being carried out a year before the end of tenancy, when it was actually two years, but these were minor discrepancies. Dr Abdalla was less convincing. He provided virtually no documentary evidence. Some of his oral evidence also seemed to be based on speculation and conjecture. He claimed that the photographs in the check out report were the result of the letting agent zooming in so that marks seemed larger. However, he wasn't present when they were taken, and he had confirmed at both the CMD and hearing that the walls in the property had been marked by his children. The Tribunal also noted that Dr Abdalla provided no evidence regarding the gardener and cleaner he said that he had employed. He did not provide their names or any details about them. He was also vague when asked about the condition of the property at the end of the tenancy. His argument was that the carpets had been new at the start of the tenancy so should not have been replaced. In relation to the cleanliness of the property, he did not assert that the property was clean but seemed to suggest that he should not be liable for the cost of cleaning because he had paid for a cleaner. He also referred to the lack of inspections carried out at the property. While this is certainly unsatisfactory, the defects were not hidden or hard to see. It should have been apparent to the Respondent that the property was not in the same condition as it had been at entry.

Cleaning - £300

29. Photographs in the checkout report and the oral evidence of both witnesses establish that the property had not been properly cleaned at the end of the

tenancy. The bathroom was very dirty – conceded by the Respondent. The photographs also show issues with the fire, oven, hob and kitchen cupboards. The property is a three bedroomed house so the estimate of £300 does not seem unreasonable. The Applicant provided the quote from the cleaner and Ms Black confirmed that this cleaner had then been instructed to do the work. The Tribunal is satisfied that the Applicant is entitled to recover this cost from the Respondent.

Re-carpeting - £1238.96

30. The photographs clearly show that the carpets had sustained considerable damage during the tenancy. They had been new at the start of the tenancy and after such a short period of time, wear and tear would not be an issue. The Tribunal was not persuaded by the Respondent's claim that an unnamed "professional" for whom he could not provide an invoice or receipt, had shampooed the carpets. However, even if this had occurred, the damage may have been too extensive for this to have been effective. This was the view taken by the Applicants who concluded that replacements were required. An estimate and invoice were produced. The sums claimed are not excessive. The Tribunal is satisfied that the Applicants are entitled to recover the re-carpeting costs.

Re-decoration - £2000

31. The re-decoration costs are only partly disputed. At the CMD, the Respondent only challenged the painting of the master bedroom. At the hearing he also mentioned the hall – later clarifying that he meant the lounge – and the kitchen. He conceded that the other two bedrooms required to be painted because of damage caused by his children. The Respondent also mentioned the ceilings at the property. These were included in the work carried out. However, in their application, the Applicants stated that the cost of painting the ceilings (£450) had been deducted from the sum being claimed as it was accepted that these had not been damaged by the Respondent.

(a) The kitchen. According to the estimate from the contractor the kitchen was not re-decorated. The Applicant's claim does not include any work carried out to the kitchen.

(b) The lounge. The claim includes painting costs for the lounge, hall and fireplace. There are photographs showing the walls in the lounge and the condition of the fireplace. The only photograph of the downstairs hall shows a section of banister, wall and stair. All relevant photographs indicate that repainting is required because of marks and damage. It may be that only parts of each room required attention, but it is unreasonable to expect a landlord to instruct a painter to paint some walls or parts of some walls, just to cover the marks. This would have an uneven effect and would not necessarily reduce the cost, especially if the damage was extensive.

(c) The master bedroom. The check out report includes photographs of the walls in the master bedroom. These do not include the section of wall which was damaged by a water leak. The Respondent said that this was extensive and that he should not be liable for the redecoration. He provided a photograph which he sent to the letting agent in February 2022. Ms Black said that she had noticed that the area in question was small and had dried up by the end of the tenancy. However, although slightly confused about the room, Mr McKay specifically recalled an area of water damage and said that he had to re-seal the area before painting it. The Tribunal notes that the area affected by the water damage though not small, was mostly restricted to the top corner of one wall. The Respondent was not liable for this area, but he was responsible for the damage to the rest of the room. For reasons previously outlined, the Tribunal is satisfied that the Applicant is entitled to recover the cost of repainting the whole room but that a small deduction should be applied for the additional work referred to by Mr McKay. The sum of £100 is deducted from the sum due to the Applicant by the Respondent for this additional work.

32. The Tribunal is satisfied that the Applicant is entitled to recover the sum of £1450 for re-decoration of the property.

Gardening - £240

33. The check in photographs only include one of the front garden and one of the back. The garden is tidy, and the bushes are all trim and shaped. The grass is not particularly short, but the photographs were taken in December, and it would not be usual for grass to be cut during the winter months. By contrast, the photographs of the garden in the check out report show that the garden had become very untidy and overgrown. The Respondent moved out in September 2023, near the end of the summer. The grass and bushes should have been properly maintained over the summer months. It was matter of agreement that the Respondent had declined to employ a gardener and said that he should be supplied with a lawn mower so that he could attend to the garden himself. This was provided in the spring of 2022. The Respondent was vague about his efforts to maintain the garden. He said that he paid cash to someone who came to the door every three months or so, to cut the grass. This individual did not carry out any additional work and the Respondent did not claim that he had weeded the garden or trimmed the bushes at any point during his tenancy. The Tribunal also notes that, cutting the grass every three months during the summer period is unlikely to be enough to keep the grass in reasonable order. The Tribunal is satisfied that the Applicant is entitled to recover the cost of re-instating the garden.

The sum due

34. The sum claimed in the application is £2710.70. However, this appears to include the sum specified in the re-carpeting estimate rather than the final invoice which was for less. After deduction of the deposit and the sum of £450 for painting the ceilings, the total sum claimed is £2528.96. However, as previously indicated, the Tribunal is satisfied that the sum of £100 should be deducted for additional work required to paint the water damaged area of the

master bedroom. The Applicant is entitled to a payment order for the sum of £2428.96

Decision

35. The Tribunal determines that an order for payment should be granted against the Respondent.

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.

Josephine Bonnar, Legal Member

22 November 2024