



**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/22/4221

Re: Property at 38 F Clepington Road, Dundee, DD3 7NY (“the Property”)

Parties:

Tayside Properties Limited, 11 Elliot Road, Dundee, DD2 1SY (“the Applicant”)

**Mr Shaun O'Neill, formerly residing at 38 F Clepington Road, Dundee, DD3 7NY
and whose current whereabouts are unknown (“the Respondent”)**

Tribunal Members:

Melanie Barbour (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to grant an order in favour of the Applicant against the
Respondent for payment of FOUR THOUSAND EIGHT HUNDRED AND
SEVENTEEN POUNDS AND FIFTY PENCE (£4,817.50) STERLING**

Background

1. An application had been received under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment.
2. The application contained the tenancy agreement, rent statement, check-in and check-out report, invoices for repairs and communication with the tenant.

3. Two case management discussions took place on 24 July 2023 and 16 October 2023. Reference is made to those case management discussion notes. A second tenant had been a party to the tenancy. There had been a preliminary question about whether he was still a party to the tenancy having left the tenancy with the knowledge of the landlord in around July 2020. By email of 31 October 2023, the applicant advised that she no longer sought an order against the second tenant and was proceeding with the application against the respondent only.
4. The matter was continued to a hearing which took place on 21 January 2025. Service on the respondent was carried out by advertisement. There was no appearance by the respondent. The tribunal was prepared to proceed in his absence. In attendance was the applicant. The hearing took place by webex.

Discussion

5. The applicant's agent advised that she sought an order for payment for £4,817.50. There had been no contact or payments by the respondent.
6. She had submitted the tenancy agreement, rent statement, check-in and out reports, invoices for the works done to repair the property, and correspondence with the respondent about the kitchen units.
7. The respondent had left the property on about 10/11 May 2022. She advised that there had been little contact from him, but he sent an email giving notice and the tenancy ended on that date. She had provided a list of 15 items for which she was claiming payment for damages and breach of contract.
8. Cleaning: the check-out reports showed the poor condition of the property. The respondent had not cleaned it. There was an invoice submitted for £160 for this claim.

9. Clearance of rubbish: the check-out reports showed that rubbish had been left by the respondent. The respondent had not removed it. There was an invoice submitted for £240 for this claim.
10. Carpets the check-out reports showed the poor condition of the carpets. She was claiming £600. There was an invoice submitted for £800 for this claim. She said that the carpets were in very good condition when she rented the property out. The carpets were ruined on exit. They were not able to be cleaned. They had to be replaced. She had spoken to the cleaner and they advised that they could not be cleaned. There was also burn marks on the carpets. She had deducted £200 which she thought was fair in terms of wear and tear. She also advised that the respondent had other people living in the property without her permission and this had led to further wear and tear on the carpets.
11. Redecoration: the check-out reports showed the poor condition of the decoration of the property. The respondent had not cleaned it. There were marks on the walls and ledges. There had been smoking in the property. She was claiming £550. There was an invoice submitted for £895 for this claim. She advised that they had been in the property for 5 years and so she accepted wear and tear, however, the condition of the property was very poor, it had not been maintained or cleaned and they had smoked in it. She considered that she sought a fair amount.
12. Rent: She referred to her rent statement. The rent outstanding was £773.94, she advised that she was prepared to seek one month's rent arrears only. The monthly rent was £530. She sought payment for that.
13. Heaters: the check-out reports showed that heaters had been removed from the walls. The cost of replacing them was £550. She sought the full sum for this item.
14. Sofa: the check-out reports showed the poor condition of the sofa. The respondent had damaged it. She had to replace it. She bought a second-hand

one on the social media site for £200. She supplied a copy of an email. She advised that she had no invoice but had paid £200.

15. Kitchen Doors: She sought £1,100 for the cost of replacing the kitchen doors. She submitted an invoice for £1,280. She had submitted messages from the respondent agreeing to pay for the replacement kitchen doors. She advised that the respondent had broken a kitchen door. She said that the kitchen had been new and was in good condition. She was unable to replace the one broken door. The respondent had agreed to repay for the kitchen doors all being replaced. He had paid £100 towards the cost as a first payment, then paid nothing further. She was prepared to accept £1100 in payment.

16. IKEA Drawers: She advised that these were drawers and cabinets for the bedrooms. They had been broken. They could not be repaired. She sought like for like replacement. She did not consider that fair wear and tear came into it. The damage was not fair wear and tear. They had been broken. She sought £160 in payment. She submitted an invoice for £145.75. She advised the additional cost was her time and petrol in going to get the items.

17. Kitchen tile: She sought £35 for the tile repair. There was an invoice submitted for £35 for this claim.

18. Bathroom Seal. The check-out reports showed the poor condition of the bathroom and lack of cleaning. She sought £50 for this replacement. There was an invoice submitted for £95 for this claim. She had reduced her claim to take into account fair wear and tear. She considered that she was entitled to her claim given that there had been no attempt by the tenant to keep the property clean.

19. Kitchen worktop: the check-out reports showed the poor condition of the kitchen. She sought £400 as her claim. There was an invoice submitted for £980 for this claim. She had deducted almost half of the invoice to account for

fair wear and tear. She advised that there was damage to the kitchen worktops. It was chipped and there were burn marks on it.

20. Freezer door: she sought £67.50. The invoice submitted was for £65.96. She said the difference was to pay for her time in being in to allow for the tradesmen to replace it.

21. TV: she sought £300. She submitted an invoice for £399. She advised that it was like for like replacement. The TV had been attached to the wall. It had been taken off the wall. The bracket had also been removed. The respondent appeared to have tried to carry out some sort of repair and they had tampered with the back of it. The remote control was missing. She advised that they had never contacted her to advise it was not working. She could have checked if it was under warranty. She said that she could not repair it under warranty given it had been tampered with. She had not claimed for the new bracket and having it reattached to the wall.

22. Mattresses: she sought £400 for replacement mattresses. She submitted an invoice for £418. She advised that they were 1 year old when the tenancy commenced. She agreed that mattresses' lifespan is around 10 years. She accepted that they were 6 years old and more towards end of their life. She advised that they could not be used. They had faeces and blood on them. She had supplied mattress protectors, but they had disappeared. She could have supplied more if asked. She could not get them cleaned. She had to replace them. Given their very poor condition, she believed that she was entitled to the sum sought.

23. She referred to the tenancy agreement and the tenant's obligations to maintain the property. She made particular reference to clauses 2.35-2.58. she also referred to page 18 of the agreement which provides that the tenant was not entitled to smoke in the property.

Findings in Fact

24. The Tribunal found the following facts established: -

25. There existed an assured tenancy between Tayside Properties Limited and Shaun O'Neill.

26. The tenant was Shaun O'Neill.

27. The landlord was Tayside Properties Limited.

28. The property was 38 F Clepington Road, Dundee, DD3 7NY.

29. It had commenced on 30 August 2017.

30. It had ended on 11 May 2022.

31. The tenancy at clause 1.9 stated that rent was £525 a calendar month payable in advance. Rent had increased to £530 per month on 28 February 2018.

32. Rent arrears as of 30 May 2022 were £773.94. There had been no payments by the tenant since that date to reduce the arrears.

33. The tenancy at clause 2 sets out the tenant's obligations. 2.4 requires that the tenant is liable for repairs and maintenance to the premises or fixtures and fittings due to negligence or misuse by the tenant or visitors. Clause 2.35 the tenant is to take reasonable care for the premises and fixtures and fittings. 2.62 the tenant is required to clean the property to a good standard at the end of the tenancy. 2.63 the tenant is required to remove rubbish at the end of the tenancy. Page 18 of the tenancy agreement contained a provision that the tenant agreed not to smoke in the property and not to allow visitors to smoke.

34. The landlord had provided invoices and evidence for the items claimed.

35. The check-in report showed that the property was in good condition at the start of the tenancy.
36. The check-out report showed that the property was in poor condition at the end of the tenancy. It was dirty. It required redecoration. The landlord had to have the rubbish removed. The landlord had had to replace carpets, kitchen units, bathroom seals, furniture, TV, and kitchen fridge freezer door.
37. The landlord had applied a reduction to the sum claimed for fair wear and tear to certain items.
38. The landlord had a contractual basis for her claim. The landlord had provided evidence of the condition of the property in support of her claim. The landlord had provided evidence of costs she had incurred in repairing and replacing the premises and its fixtures and fittings.
39. The respondent had agreed to pay the landlord for the replacement kitchen doors.

Reasons for Decision

40. Section 16 of the 2014 Act provides the Tribunal with the power to deal with civil matters arising out of assured tenancies, failure to pay contractual rent and damages for failing to take proper care of the property are some of those matters.
41. The applicant appeared. The respondent did not appear. The applicant confirmed that she sought an order for payment. We found the applicant to be credible and reliable in her submission to the tribunal. She was clear about the matters she sought payment for in her claim and she provided evidence in support of her position.

42. The landlord had acknowledged that the tenant had resided in the property for 5 years and she had made deductions to some of the invoices to take into account fair wear and tear. She gave evidence as to why she had deducted the amounts she had the items and why on some occasions she had not deducted much from the cost. The tribunal considered that her assessment of wear and tear was reasonable. We also found that she was credible when she explained that there were other matters that she had not sought payment for, and the tribunal found her approach to be fair and pragmatic.

43. The tribunal found that the landlord had a contractual basis for her claim. The landlord had provided evidence of the condition of the property in support of her claim. The landlord had provided evidence of costs she had incurred in repairing and replacing the premises and its fixtures and fittings.

44. Considering the papers and the oral submission by the applicant the tribunal was prepared to grant the order for payment of the sum sued.

Decision

45. The Tribunal grants an order in favour of the Applicant against the Respondent for payment of FOUR THOUSAND EIGHT HUNDRED AND SEVENTEEN POUNDS FIFTY PENCE (£4,817.50) STERLING.

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.

Melanie Barbour

21 JANUARY 2025

Legal Member/Chair

Date
