

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/CV/25/3495

Property at 1/2 39 Whitehaugh Road, Glasgow, G53 7JQ (“the Property”)

Parties:

Miss Karen Nicholson, 56 Inverarish Terrace, Isle of Raasay, Kyle, IV40 8NS (“the Applicant”)

Mr James Dunlop, 89 Bangorshill Street, Thornliebank, Glasgow, G46 8LU (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £260 should be made in favour of the Applicant.

Background

1. The Applicant seeks a payment order in relation to a tenancy deposit. A Council Tax Notice, bank statement and emails from the three approved deposit schemes were lodged with the application. The Applicant stated in correspondence to the Tribunal that she had not been provided with a tenancy agreement.
2. A copy of the application was served on the Respondent by Sheriff Officer. Both parties were notified that a case management discussion (“CMD”) would take place by telephone conference call on 15 April 2025 at 2pm. The Respondent lodged a written response and documents prior to the CMD.
3. The CMD took place at 2pm on 15 April 2025. The Applicant participated. The Respondent also participated, supported by his sister. A related case (PR/24/3496) was also discussed.

Summary of discussion at CMD

4. The Legal Member noted that the Respondent had only lodged a response to the CV case, which is for a payment order in relation to the deposit. Mr Dunlop said that, although the covering letter from the Tribunal refers to both cases, he had not been served with a copy of the application for the PR case. The Legal Member explained that the PR case is an application for a payment order in relation to a failure to comply with the Tenancy Deposit Regulations. She also advised that the Tribunal is required to impose a sanction where a breach is established. However, all the paperwork submitted by the Applicant relates to both applications and based on the information provided by Mr Dunlop, it appeared that only the PR application form is missing from his bundle. The Respondent was advised that the CMD in relation to the PR case could be adjourned, so that a copy of the form G could be sent to him. He would then have the opportunity to consider the application before participating in a CMD. Mr Dunlop said that he did not want the CMD to be adjourned to another date and preferred to proceed with both cases.
5. Ms Nicolson confirmed that the Respondent had repaid part of her deposit, the sum of £295. However, she was seeking a payment order for the remainder of the deposit, under deduction of the sum of £20 for the broken catch on the dishwasher drawer. She conceded that Mr Dunlop was entitled to retain this because she had never reported the damage. She disputed his right to withhold the rest because it related to a leak from the bathroom. She had been unaware of the leak and was not responsible for it. The Respondent, as landlord, was responsible for the maintenance of the property. Mr Dunlop said that he had withheld £280 to cover the cost of the dishwasher repair (£20), the plumber (£230) and the replacement flooring he had to purchase for the bathroom (£30). He had not included the cost of the joiner's work. The plumber had replaced the toilet as it was cracked. After the Applicant had moved out, he lifted the lino and discovered the damage caused by the leak. There was black mould which suggested that the leak had been ongoing for a while. The base of the toilet was cracked, but this was only visible when the lino had been lifted. He understood why the Applicant had been unaware. He had not been in the property for 4 years, since she had moved in. He had not carried out any inspections.
6. Ms Nicolson said that she has reviewed the photographs provided by Mr Dunlop. However, she was completely unaware of the leak and the crack. She is now surprised that the downstairs neighbour had not been affected by the leak, but the neighbour did not report the matter to her. She said that as she was unaware of the leak, and not responsible for the damage, she is entitled to repayment of £260.
7. Mr Dunlop said that he thought that he was doing the right thing when he only returned part of the deposit. The CMD was adjourned for a short period to allow the Respondent the opportunity to discuss matters with his sister and consider his position. Following the adjournment, Mr Dunlop said that he did not want the case to be continued to an evidential hearing because he had nothing

further to add to what had been said already. He accepted that the Applicant was unaware of the leak. The plumber said that the leak came from the crack in the base of the toilet, but he did not know how that had happened or if it was her fault.

8. Mr Dunlop told the Tribunal that he had not known about the tenancy deposit regulations. He has three rental properties and the deposits for the other two have not been lodged either. When asked why he was unaware of his obligations in terms of the regulations, he said that he has a full-time job as a postman and has 4 children and a stepchild. In response to a question about the absence of a tenancy agreement he stated that he thought that he had issued an agreement but that the Applicant had not signed it. However, it was four and a half years ago so he can't be sure. He said that he had purchased his first rental property 10 or 11 years ago and has been a landlord since that time.
9. Ms Nicholson told the Tribunal that the situation has been very stressful. When she moved out of the property she re-located to the other side of the country and was dealing with a difficult pregnancy. The dispute over the deposit added considerably to the stress she was experiencing. She said that she and the Respondent had got on fairly well, but he didn't visit much, and she had to purchase smoke and CO detectors as he failed to do so. Scottish Gas offered to fit a CO detector for £30 but he refused, stating that he would get someone to do it. However, he did not do so. Overall, he had not been a good landlord.

Findings in Fact

10. The Applicant is the former tenant of the property.
11. The Respondent is the owner and landlord of the property.
12. The tenancy started on 1 January 2020 and terminated on 28 June 2024.
13. Prior to the start of the tenancy the Applicant paid a deposit of £575.
14. The deposit was not lodged in an approved scheme.
15. The Respondent repaid part of the deposit, the sum of £295, to the Applicant. He refused to repay the remainder of the deposit to the Applicant.
16. The Respondent withheld the remainder of the deposit to cover the cost of replacing flooring in the bathroom, the toilet and the catch in the dishwasher drawer.
17. The flooring in the bathroom was damaged by a leak from the toilet. This was not discovered until the tenancy ended.

18. There was a crack in the base of the toilet at the end of the tenancy.
19. The crack in the toilet and the damage to the bathroom floor were obscured by the linoleum covering the bathroom floor.
20. The Applicant did not know that there had been a leak from the toilet or that the toilet was cracked.

Reasons for Decision

21. The Tribunal considered whether the case should proceed to an evidential hearing. The Tribunal had adjourned the CMD for a brief period to give the Respondent the opportunity to consider his position. Following this adjournment, he told the Tribunal that he was not prepared to concede that the Applicant was entitled to the remainder of her deposit but said that he did not want the case to be continued to a hearing. He said that he had nothing further to add to what had been said already or any further documents to lodge. He asked the Tribunal to make a decision without further procedure. Having regard to the overriding objective and noting that there was no point in arranging a hearing to hear the same information from the parties and consider the same documents, the Tribunal decided to make a decision on the application.

Damage to the dishwasher - £20

22. The Applicant told the Tribunal that she accepted that the Respondent was entitled to deduct the cost of repairing the dishwasher from the deposit. The catch had been broken throughout the tenancy, and she had never reported it to the Respondent.

Replacement of the toilet and replacement flooring

23. The Applicant told the Tribunal that she had been unaware of the leak and the crack in the toilet as the damage was hidden by the linoleum. The photographs provided by the Respondent in advance of the CMD appear to establish that the leak had been a long-term problem, but it had not been visible, and the neighbour underneath had not reported any problems. The Respondent did not dispute this statement and confirmed that he accepted that the Applicant would not have been aware of the leak or the crack on the toilet.
24. The Tribunal was not provided with a tenancy agreement. The Applicant said that she was never given one by the Respondent. Although the Respondent thought that he had issued an agreement, he could not be sure after 4 years and he was not able to produce it. Usually, a tenancy contract sets out the parties' respective rights and obligations in relation to the property. As a general rule, the landlord is obliged to maintain the property and to carry out repairs. He is also obliged to do this in terms of the Housing (Scotland) Act 2006. The only exception to a landlord's statutory (and contractual) repairing obligations relates to damage caused by the tenant or attributable to neglect or

improper use of the property. In this case, there are no contractual terms to be considered. However, even if the parties had agreed to a different arrangement from the norm, a landlord cannot contract out of his statutory obligations. Often, the repairing standard provisions under the 2006 Act are incorporated into tenancy agreements.

25. The Respondent does not claim that the damage to the toilet was caused by the Applicant. As the crack was not visible, and as he had not been at the house in some time, he was unable to say when it occurred. He was also unable to say how it occurred. In the absence of any evidence that the Applicant was responsible for the crack (and the leak if this was caused by the crack), the Tribunal concludes that the defects were the responsibility of the Respondent. Had the damage come to light during the tenancy, the Respondent would have been obliged to carry out the necessary repairs. The fact that it only came to light after the tenancy had ended does not alter this. The Respondent failed to establish any legal basis for charging the Applicant for the work. He could not explain why he believed that he was entitled to do so. He seemed to think that the cost of the repairs should be shared by the landlord and outgoing tenant. Based on the available information and evidence, this was unjustified.

26. The Tribunal is therefore satisfied that the Applicant is entitled to repayment of the remainder of the deposit, less the sum required to repair the dishwasher.

Decision

27. The Tribunal determines that an order for payment of the sum of £260 should be made in favour of the Applicant.

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.

J Bonnar

Legal Member

Date: 23 April 2025