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 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/24/2294

Re: Property at 26 Thornyflat Place, Ayr, South Ayrshire, KA8 0NE ("the Property")

Parties:

Mr Kevin Bell, Norma Millar Bell, 11 Auchenharvie Place, Stevenston, North Ayrshire, KA20 4AE ("the Applicants")

Miss Shelby McAllister, 45 Westwood Avenue, Ayr, KA8 0QW ("the Respondent")

Tribunal Members:

Nicola Irvine (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") granted an Order for Payment against the Respondent in favour of the Applicants in the sum of £1,140.18.

Background

1. The Applicants made an application to the Tribunal seeking an order for payment in terms of the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act") and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules and Procedure) Regulations 2017 ("the 2017 Rules").

2. This application previously came before the Tribunal for a Case Management Discussion ("CMD") on 5 November 2024. The Tribunal issued a Note and Notice of Direction following the CMD.

The Hearing – 29 May 2025

3. The Hearing took place by telephone conference call. The Applicants participated in the Hearing and represented themselves. The Respondent did not participate in the Hearing but was represented by Mr Gerard Tierney.

4. The Tribunal invited the Applicants to give evidence. Their evidence is summarised below. The summary is not a verbatim account of what was said at the Hearing but rather an outline of the matters relevant to the Tribunal's consideration of the application. At the conclusion of the evidence, the Tribunal adjourned the Hearing to enable the members to consider the evidence given. The parties were advised that a written decision with a statement of reasons would be issued to parties.

5. The purpose of the Hearing was to determine whether the Respondent was liable to pay the Applicants for removal or damage to items at the property.

Summary of evidence

<u>Mr Kevin Bell</u>

4. Mr Bell stated that the Applicants wished to claim reimbursement from the Respondent for the mortgage payments incurred by them because the Respondent did not vacate the Property when they wanted her to. Following questioning by the Tribunal, Mr Bell conceded that there was no legal basis for seeking reimbursement from the Respondent.

5. In relation to the decking, the existing decking had been there when the Applicants purchased the Property in 2014. In 2020, the Respondent asked if she could install new decking so that she could install a hot tub. The Applicants gave their consent and asked the Respondent to let them know when the existing decking was removed so that they could re-use it. When the Applicants asked the Respondent for the old decking, they were told by the Respondent that it had been disposed of because it was worn out. Mr Bell expected that when the Respondent vacated the Property the decking would have been there because it was part of the Property. The Respondent did not discuss removal of the decking boards. The Applicants only discovered that the decking boards had been removed after the Respondent vacated the Property. The Applicants purchased new decking boards at the cost of £480 and Mr Bell installed them.

6. Under cross examination, it was accepted that the new decking area was around 3 times the size of the old decking and that the decking sub-structure was left by the Respondent. The old decking was not rotten or in a dangerous

condition. The Respondent had removed fitted carpets and had installed wooden and vinyl flooring without consent.

7. The Respondent left the Property in poor condition and the Applicants spent many hours restoring the condition of the Property so that they could sell it.

8. When the Applicants recovered possession of the Property, they found that a radiator valve had broken off and could not be repaired. They also noted that the heat detector which had been fitted 12 months prior was smashed and broken. The radiator valve and heat detector had to be replaced.

Mrs Norma Millar Bell

9. Mrs Bell agreed with the evidence given by Mr Bell in relation to the decking and the heat detector and radiator valve. Whenever Mr Bell was at the Property, she was there too, so they witnessed the condition of the Property together. In relation to the decking, when the Applicants told the Respondent that they wished to recover possession so that they could sell the Property, the reply from the Respondent was to the effect that she had just put new decking down. The Applicants expected that the new decking would have been left at the Property when the Applicant moved out.

10. In relation to the fridge freezer, the Applicants purchased a brand new fridge freezer at the outset of the tenancy. The Respondent commented that it was too small. When the Applicants inspected the Property, they realised that the Respondent had purchased a bigger fridge freezer and they were told that the Respondent had put the other fridge freezer in the shed. The Respondent later told the Applicants that the council had uplifted the smaller fridge freezer by mistake and it had therefore been disposed of. The Respondent told the Applicants that she would leave a fridge freezer. When the Applicants recovered possession, they noticed that there was no fridge freezer but that a dishwasher had been installed. The Applicants had not been notified by the Respondent that she had installed a dishwasher. The Applicants did not want a dishwasher.

11. The Applicants bought and fitted new blinds throughout the Property at the outset of the tenancy. There was no blind fitted at the patio doors. The Respondent fitted a blind at the patio doors and that was left in the Property. After the Respondent left the Property, the Applicants discovered that the all of the other blinds were broken. They also discovered that the Respondent had removed the carpets and had installed wooden and vinyl flooring, without

consent. It was accepted that he Applicants sold the Property with the new flooring and with the dishwasher.

Findings in fact

12. The parties entered into a private residential tenancy which commenced 12 December 2019 and ended on 8 March 2024.
13. The contractual monthly rent payable was £580.

14. The Respondent owes rent arrears of £145.

15. The Applicants incurred an outlay of £15.49 to replace a heating valve which was damaged. The Respondent was responsible for the damage.

16. The Applicants incurred an outlay of £29.69 to replace a heat alarm which was damaged. The Respondent was responsible for the damage.

17. The Applicants incurred an outlay of £300 for waste uplift which related to items left at the Property by the Respondent.

18. The Respondent removed decking from the garden of the Property, installed new decking and removed the new decking boards when she vacated the Property, leaving the sub-structure of the decking.

19. The Respondent arranged disposal of the old decking and did not notify the Applicants that the old decking was available for collection.

20. The Applicants incurred an outlay of £480 to replace the decking boards.

21. The Applicants bought a new fridge freezer at the outset of the tenancy at a cost of £170.

22. The Respondent bought a new fridge freezer and disposed of the fridge freezer purchased by the Applicants.

23. The Respondent removed the fridge freezer when she vacated the Property.

24. The Respondent had a dishwasher installed and left that in the Property at the end of the tenancy.

Submissions

25. For the Applicants, Mr Bell moved the Tribunal to grant the application for a payment order on the basis that all of the outlays have been vouched and those outlays were incurred because of damage caused by the Respondent.

26. For the Respondent, Mr Tierney confirmed that, although a written tenancy agreement has not been produced, it was a standard private residential tenancy which the parties agreed. It was confirmed that the cost of waste removal and rent arrears was not in dispute. In relation to the decking, the Respondent made an improvement with the consent of the Applicants. The framework of the decking was left by the Respondent and the value of that outweighs the value of the decking which was removed. The old decking was not fit for use. The fridge freezer was removed in error, but the value of the dishwasher exceeds the value of the fridge freezer. The values claims for the radiator valve and heat alarm were conceded. Given that the Applicants conceded that the size of the new decking was 3 times the size of the decking which was removed, it is reasonable to assume that the value of the sub-structure was significant.

Reasons for decision

27. It was a matter of agreement that the Respondent owed rent arrears of £145 and was responsible for the cost of waste uplift in relation to the items she left in the Property.

28. There was no written tenancy agreement before the Tribunal, but it was agreed that the tenancy was a standard Private Residential Tenancy. The Tribunal proceeded on the basis that this means the terms of the Scottish Government model private residential tenancy agreement applied.

29. There was no evidence to suggest that the existing decking failed to meet the repairing standard. The decking was a fixture adjoined to the Property. The Applicants gave consent to the Respondent removing the existing decking and installing new decking. Both Applicants expected that the new decking which the Respondent had installed to be left at the Property. There was no discussion between the parties about the Respondent removing the decking boards. The Respondent's representative could not offer any cogent reason for the Respondent having removed the decking boards. Whilst the Respondent's representative submitted that the larger sub-structure which the Respondent installed was of value (unspecified), the sub-structure was not usable unless the Applicants had new decking boards installed. In terms of clause 28 of the

Scottish Government model tenancy agreement, the tenant agrees not to make any alteration to the Property, its fixtures or fittings, nor to carry out any internal or external decoration without the prior written consent of the Landlord. Having given the Respondent consent to alter the fixture of the Property (the decking), the Applicants were reasonably entitled to expect that the fixture would remain as installed.

30. Clause 25 of the model tenancy agreement provides that

> "*the Tenant agrees to replace or repair (or, at the option of the Landlord, to pay the reasonable cost of repairing or replacing) any of the 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 Tenant, anyone living with the Tenant or an invited visitor to the Let Property….Items to be replaced by the Tenant will be replaced by items of equivalent value and quality."*

The evidence of the Applicants was that they did not give consent to the Respondent to remove the fridge freezer. There was no evidence from the Respondent that any consent was given. At the CMD on 5 November 2024, the Respondent told the Tribunal that the Applicants' fridge freezer had been moved to the shed and had subsequently been uplifted and disposed of. It was agreed that the Respondent removed the fridge freezer that she purchased when she left the Property. In terms of clause 25, the Respondent is liable to replace or pay for the cost of replacement of the fridge freezer. There was no evidence that the condition of the fridge freezer had deteriorated through use. The Tribunal considered that the Applicants' loss in this regard is reasonably estimated at £170.

31. In terms of clause 17 of the model tenancy agreement, the Respondent agreed to take reasonable care of the Property and not interfere with the smoke detectors, carbon monoxide detectors, heat detectors or the fire alarm system. The Tribunal accepted the Applicants' unchallenged evidence about the damage to the radiator valve and the heat alarm.

32. For all of the reasons set out above, the Tribunal granted the application and made an order for payment against the Respondent in favour of the Applicants in the sum of £1,140.18.

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.

Nicola Irvine

Legal Member/Chair **4th June 2025**
Date