

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

Chamber Ref: FTS/HPC/CV/23/4119

Re: Property at Weavers Cottage, Edrom, Duns, TD11 3PX (“the Property”)

Parties:

Mr Jasper Peter Hardy, Allanbank Courtyard, Allanton, Duns, TD11 3PY (“the Applicant”)

Mr Gordon Drummond, Broomhouse, Duns, TD11 3PP (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.

Background

1. By application dated 18 November 2023 the Applicant applied to the Tribunal for an order for payment by the Respondent for the return of his deposit of £1100.00 paid to the Applicant at the commencement of his tenancy. The Applicant submitted a copy of his tenancy agreement, proof of the tenancy, and copies of text exchanges between the Respondent and the Applicant’s father in support of the application.
2. By Notice of Acceptance dated 21 November 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.
3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 11 January 2024.

4. A CMD was held by teleconference on 26 February 2024. The Applicant attended in person supported by his father Dr Michael Hardy. The Respondent also attended in person. The Respondent advised the Tribunal that written representations had been submitted but it appeared these had not been circulated. The Respondent said that he disputed the Applicant was due a refund of the whole deposit of £1,100. The Applicant said that the Respondent should be paid £626.80 and was proposing to retain £473.20 in respect of outlays he incurred which he claimed the Applicant was liable for, namely: -
Materials £112.50
Cost of dehumidifiers, etc £115.2
£108 in connection with electrician costs and
£137.50 in respect of one week's rent owed.
The Respondent's position is that the repair costs were in respect of water damage not reported to him timeously by the Applicant. He said that he had arranged some of the repairs, etc himself as the cheapest alternative quote he received for the works was £2,160. He said he had tried to negotiate an agreement over this with the Applicant but this was not successful, so he was currently still retaining the full deposit. The Respondent confirmed that his written representations were detailed and supported by photographic and other evidence.
5. The Applicant disputed that he was liable for the outlays the Respondent stated he has incurred. The water damage arose from storm damage which had only recently occurred prior to him moving out and which was the responsibility of the Respondent. The Applicant mentioned that problems with the roof had been intimated to him by the Respondent at the beginning of the tenancy (and mentioned in the tenancy agreement itself) and to his knowledge, had never been attended to by the Respondent during his tenancy. He also referred to some of the supporting documentation with his application, including messages from the Respondent where he had confirmed that he would be prepared to accept the sum of £55 in settlement. It was noted that the Applicant had not been able to utilise the tenancy deposit schemes' dispute resolution procedures to resolve this dispute, which would have been his preference.
6. In light of there being disputed facts the Tribunal adjourned determination of the application to a full hearing of the Tribunal.
7. The Respondent's written representations dated 31 January 2024 were received by the Tribunal administration on 5 February 2024 and provided to the Tribunal after the CMD.
8. By email dated 12 February 2025 the Respondent submitted further written representations to the Tribunal.

The Hearing

9. An in-person hearing was held at Dunbar Town House on 11 June 2025. The applicant attended in person supported by his father Dr Michael Hardy and the Respondent also attended in person supported by an assistant Ms Rachael Farrel.

10. The Applicant advised the Tribunal that he had never received the Respondent's written representations referred to at the CMD but that he did not wish this to prevent the hearing going ahead.
11. The Respondent advised the Tribunal that following the CMD he had paid the Applicant £626.80 and was still retaining the balance of the deposit amounting to £473.20. The Respondent advised the Tribunal that he had obtained quotes from third parties to carry out repairs to the property but had attended to the repairs himself without bringing in a firm and had only charged the Applicant for materials and one week's loss of rent and the cost of an electrician.
12. The Applicant advised the Tribunal that his television had been located beneath the area that had been affected by water ingress. He said that if it had been visible during the tenancy he would have contacted the Respondent. The Applicant said that when there had been a leak in the property, he had contacted the Respondent.
13. The Respondent submitted that it was evident from the damage to the plasterboard that the water ingress had been ongoing for some considerable period of time and could not have arisen from storm damage just shortly before the end of the tenancy as suggested by the Applicant. The Respondent advised the Tribunal that Ms Farrel lived in the adjoining property and carried out work on his behalf. He said he had asked her to take photographs of the property in June 2023 and referred the Tribunal to the photographs submitted with his written representations. The Respondent said that although at the time it had not been clear to him that water penetration was evident, when the photographs were later enhanced there were visible signs. The Respondent went on to say that the roof of the property had been refurbished prior to the commencement of the tenancy.
14. The Applicant disputed that the roof had been refurbished prior to the tenancy commencing.
15. The Tribunal noted that the Respondent had been concerned in June 2023 about the condition the Applicant was keeping the property in and had told the Applicant that it was unacceptable.
16. At the end of the tenancy Ms Farrel inspected the property and had noted some damage caused by the Applicant's dog and had agreed to offset the cost of repair against the blinds provided by the Applicant but that there would be a final inspection by the Respondent.
17. The Applicant reiterated his position that the damp at the property had only become visible following the storm a few days before he left the property.
18. The Respondent referred the Tribunal to the photographs submitted and to the report by Border Build & Renovation that indicated the water ingress had been ongoing for some time. The Respondent also referred the tribunal to the

presence of mould which he submitted would only have occurred over a prolonged period.

19. In response to a query from the Tribunal the Applicant accepted that it was a condition of the tenancy agreement that he was obliged to inform the Respondent of any damage to the property.

Findings in Fact

20. The Applicant entered into a Private Residential tenancy of the property that commenced on 22 December 2021 and ended on 28 October 2023.
21. The Applicant paid a deposit of £1100.00 to the Respondent at the commencement of the tenancy.
22. The Applicant's deposit was not placed in an approved tenancy deposit scheme.
23. The Respondent has retained £473.20 of the Applicant's deposit.
24. In terms of the tenancy agreement the Applicant undertook to notify the Respondent as soon as reasonably practicable of the need for any repairs.
25. In terms of the tenancy agreement the Applicant is liable for the cost of any repairs where the need for them is attributable to his fault or negligence.
26. There was water ingress to the north-east area of the lounge of the property that has travelled from below the roof space to floor level.
27. The plasterboard in the area was saturated and disintegrating.
28. The insulation behind the plasterboard was sodden and black with mould.
29. The cause of the water ingress was from a slipped slate.
30. There was some evidence of water penetration at area in question from photographs taken by Ms Rachael Farrel on 5 June 2023.
31. The Respondent did not report the damage to the property until the end of the tenancy.

Reasons for Decision

32. It was agreed that the Applicant paid a deposit of £1100.00 to the Respondent at the commencement of the tenancy and for reasons that the Tribunal need not consider in this application the Applicant's deposit was not lodged in an approved tenancy deposit scheme. It was also agreed that following the CMD on 26 February 2024 the Respondent refunded £626.80 to the Applicant.

33. The Applicant accepts that he was obliged to report any necessary repairs to the Applicant as soon as reasonably practicable after he became aware of them and also accepts that he would be liable for the cost of any repairs if the need for them is the result of fault or negligence on his part all in terms of the tenancy agreement.
34. The Tribunal had the benefit of the report from Border Build & Renovation, Bridgend, Duns which indicated that the water ingress at the property had been ongoing for some time and the photographs taken by Ms Farrel on 5 June 2023 provide some indication that there is damp in the south-east corner of the lounge.
35. The photographs taken at the end of the tenancy show very clearly the extent of the water ingress and also the presence of significant mould growth.
36. On balance the Tribunal preferred the evidence of the Respondent to that of the Applicant. Given the terms of the report from Border Build & Renovation it is unlikely that the water ingress occurred as a result of a storm shortly before the end of the tenancy although that may have further contributed to the damage. Given the appearance of some damp in June 2023 and the extent of the damage by October 2023 the Tribunal is satisfied that the water ingress had been ongoing for some considerable time.
37. The issue for the Tribunal then is to consider whether the Applicant was at fault or was negligent by not notifying the Respondent of the damage. The Applicant can only be at fault or negligent if he can reasonably be expected to have seen the signs of the water ingress and then failed to notify the Respondent. The Applicant said that he only noticed the water ingress at or shortly before the end of the tenancy. Given the extent of the damage and the obvious mould growth the Tribunal did not find the Applicant to be a credible witness in that part of his evidence. The Tribunal preferred the evidence of the Respondent who submitted that it must have been apparent to the Applicant at a much earlier stage that there was some water ingress.
38. The Tribunal before finding the Applicant liable for any costs incurred has to be satisfied that the costs would not have been incurred if he had reported the water ingress at an earlier stage. The Tribunal is satisfied that if the Applicant had reported the water ingress to the Respondent as soon as it became apparent the cost of repair would have been less. The work could have been done during the tenancy, it may not have been necessary to hire dehumidifiers, or to replace the plasterboard or to employ an electrician although there may have been some costs involved. The Respondent chose to undertake the repairs himself and did not charge for labour. The quote for undertaking the repairs provided by Border Build & Renovation was in the sum of £2160.00 but the Tribunal does not consider that to be relevant considering the Respondent chose to undertake the repairs himself.
39. After carefully considering all of the evidence the Tribunal was satisfied that the Applicant ought to have reported the water ingress to the Respondent at an

earlier date and from the photographs submitted by the Respondent it ought to have been apparent to the Applicant by about June 2023 that there was water ingress at the property. In the circumstances the Tribunal has concluded that although there may have been some minimal cost involved in carrying out repairs to the property if the Applicant had reported the water ingress in about June 2023 the vast majority of the cost is attributable to the fault of the Applicant for failing to notify the respondent of the water ingress and in the circumstances the Tribunal has determined that the Respondent is entitled to withhold the balance of the Applicant's deposit and refuses the application.

Decision

40. The application is refused.

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.

Graham Harding

Graham Harding
Legal Member/Chair

23 June 2024
Date