



**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/24/1656**

**Re: Property at 4A The Dell, Newton Mearns, Glasgow, G77 5RF ("the Property")**

**Parties:**

**Mrs Sharon O'Donnell, Flat 23 Broom Burn Court, 14 Broomburn Drive, Newton Mearns, G77 5JG ("the Applicant")**

**Mrs Evelyn Bryce, 58 Gallowhill Road, Carmunnock, Clarkston, Glasgow, G76 9DQ ("the Respondent")**

**Tribunal Members:**

**Gillian Buchanan (Legal Member) and Gerard Darroch (Ordinary Member)**

**Decision**

- 1.1 At the Hearing which took place by telephone conference on 10 June 2025 the Applicant and the Respondent were in attendance.
- 1.2 At the outset of the Hearing the Applicant confirmed that she had no witnesses and had lodged no additional documentation subsequent to the Case Management Discussion ("the CMD") on 10 December 2024. The Respondent also confirmed she had no witnesses. She had assumed that the Tribunal would contact the painter and decorator to arrange his attendance. The Respondent had lodged additional documentation received by the Tribunal on 27 May 2025.

**Background**

- 2.1 At the CMD on 10 December 2024, the Tribunal identified the following issues to be resolved at the Hearing namely:-
  - i. With regard to the lounge carpet –
    - a. To what extent, if any, were there stains on the carpet at the outset of the PRT;
    - b. To what extent were there stains on the carpet at the end to the PRT and do any such stains amount to fair wear and tear such that the Applicant is not liable therefore?

- c. Did the Respondent have the carpet professionally cleaned after the end of the PRT and if so are the costs thereof vouched and reasonable?
  - d. In that the Respondent did not replace the lounge carpet at the end of the PRT is the Applicant liable for any cleaning costs per c. above.
- ii. With regard to the paintwork in the kitchen, lounge, hall and bedroom –
  - a. Did the Applicant and any guests smoke in those parts of the Property?
  - b. Was the paintwork in those parts of the Property affected by smoking and, if so, to what extent?
  - c. Was it reasonable for the Respondent to have those parts of the Property painted after the end of the PRT and prior to placing the Property on the market for sale and, if so, are the costs vouched and reasonable and is the Applicant liable therefore?
- iii. Was any skirting board removed by the Applicant or contractors/agents employed by her in the kitchen of the Property and, if so, to what extent has the Respondent suffered any loss as a result?
- iv. Was the bathroom window broken at the end of the PRT and, if so, (a) to what extent is the Applicant liable therefore and (b) are any costs incurred by the Respondent in having the window repaired vouched and reasonable?
- v. In that the Applicant vacated the Property on 31 January 2024 and returned the keys thereto on 2 February 2024, and given that the Applicant concedes a liability for rent due to the Respondent for the period 28 – 31 January 2024 in a total sum of £80, to what extent is the Applicant liable to the Respondent for additional rent for the period 1 February 2024 to 6 April 2024 and, if so, in what amount?
- vi. In light of the above, to what extent, if any, is the Respondent entitled to retain the deposit of £1500 paid by the Applicant and to what extent, if any, is the Applicant entitled to re-payment of the deposit?

## **The Hearing**

3.1 Dealing with each of the disputed issues in turn the parties made the following representations:-

- i. Lounge Carpet

### *For the Applicant*

The carpet in the Property was expensive but cream in colour. When the Applicant took over the tenancy her Mum pointed out to her faint orange stains over the carpet. The Applicant was not concerned by those marks. There were around five of them which could be seen when standing up. She did not report these stains to the Respondent at the outset of the tenancy.

At the end of the tenancy there were two main stains. One stain arose as a result of a cup of tea being knocked over. The Applicant treated the area immediately by soaking up the liquid with paper towels and using a carpet cleaner. A friend also had a steam cleaner which the Applicant used but which did not make any difference. The stain was in the middle of the room in a prominent place. Towards the end of the tenancy the Applicant discussed the position with the Respondent and offered to have the carpet professionally cleaned. However the Respondent was not keen for that to be done. The Applicant is not sure what the cost of a professional cleaner would have been but agreed to meet that cost.

The other stain was by the window. The window was in need of repair. The frames were rotten and the weather had taken its toll. The frames were leaking water which travelled to the carpet. The Applicant did not find that stain until she was leaving the Property as it was under a sideboard against a wall. This stain was found on the morning of the Applicant moving out. She did not try to clean it and did not advise the Respondent.

The Applicant does not dispute that the Respondent appointed a contractor to clean the carpet at a cost of £40 and is happy to pay for that.

*For the Respondent*

The Respondent agreed the figure of £40 for the contractor.

ii. Paintwork

*For the Applicant*

The Applicant accepted that some guests would smoke in the kitchen but with the windows open. This would generally happen late in the evening as the estate is quiet and she was conscious not to allow noise outside. The internal kitchen door would also be closed. Guests did not smoke all through the Property. The Applicant stated that she would smoke in the kitchen but otherwise outside. Asked about the effect of the smoking on the decoration the Applicant said she had not noticed any. Her mother cleaned the Property at the end of the tenancy and all cabinets were wiped down.

With regard to the condition of the other rooms, the Applicant said they all looked fine and there were no marks or additional stains. The Property was handed back in the same condition as at the start.

The Applicant said she would be happy to meet the costs associated with the redecoration of the kitchen and living room but not otherwise. Having regard to the invoice for the paintwork dated 12 April 2024, the Applicant accepted liability for the cost of £495 in respect of the lounge and £165 in respect of the kitchen.

*For the Respondent*

The Respondent sought estimates for the paintwork. The invoice of 12 April 2024 of All & Dec is assumed to be inclusive of VAT. With regard to the hall and bathroom, the Respondent said these areas were heavily smoke damaged and the smoke could be smelt on walking in the door. Another contractor who provided an estimate, Irwin Houston, said in an e-mail on 19 February 2024 that the only way to remove the smell was to paint the Property ceilings, walls and woodwork. His quote was for painting the whole property. The Respondent did not believe that the Applicant always went outside to smoke. She had previously broken her leg earlier in the tenancy and had indicated that she had problems answering the intercom. It was reasonable to eliminate the smell in the Property and the Respondent endeavoured to reduce the costs as much as she could.

With regard to the photographs lodged within her documentation on 27 May 2025, the Respondent went in after the redecoration had taken place and washed down the units in the kitchen. She also washed down the smoke detector. The photographs show the nicotine on the various cloths used. The Respondent also referred to the first photograph within "Item 15" which showed a photograph of the kitchen and a mark where a picture had been taken down. The Respondent took the photograph on 28 February 2024.

The contractor required to use a stain block before painting to avoid the stains coming back through the new paintwork all is narrated on the invoice. In response to a question from the Tribunal noting no stain block was used in respect of the bathroom which suggested that there was no evidence of nicotine damage in the bathroom, the Respondent agreed this was a possibility. There was no other reason for painting the bathroom other than for smoke damage and the strong smell within the Property.

There was also a smell of smoke in the bedrooms but these were not painted. The Respondent did not want to incur more costs than the deposit would cover. The Respondent thinks the Applicant smoked throughout the Property.

iii. Skirting Board

*For the Applicant*

With regard to the skirting board the Applicant stated that she was not aware of any skirting board being missing and did not remove any.

*For the Respondent*

The Respondent did not previously discuss the missing skirting board with the Applicant and no skirting board was replaced prior to the Property being sold.

iv. Bathroom Window

*For the Applicant*

The Applicant stated that the bathroom window was left in the same state as when she moved into the property. It was always very stiff and required pushed hard to open. The window still operated and she does not consider herself responsible for any costs relative there to.

*For the Respondent*

The Respondent stated that the window would not open at all. The contractor appointed by the Respondent also tried to open the window and said that the mechanism was broken and would require to be replaced. The cost was £50. The contractor did not express a view as to how the mechanism had become broken. The Applicant never mentioned the window being broken to the Respondent. Because the Applicant never discussed the position with the Respondent the Applicant liable for the repair cost. The windows in the Property are around 18 years old. The Respondents said the windows worked OK when the Applicant moved in. If there had been a problem with the windows the Applicant should have discussed the issue with the Respondent during the tenancy.

v. Rent

*For the Applicant*

The Applicant has already conceded rent due from 28 - 31 January 2024 in a sum of £80. At the Hearing the Applicant also conceded being liable for the rent due on 1 and 2 February 2024.

The Applicant said she had discussed moving out of the Property with the Respondent during January 2024. Everything happened quite quickly. She did not give the Respondent a full months notice, more likely two weeks. This worked to the advantage

of the Respondent as it allowed the Respondent to prepare the Property for sale at an earlier date. The Applicant referred to an e-mail of 20 January 2024 send to the Respondent discussing renting a property close by. That showed her intention to move out.

#### *For the Respondent*

The Respondent said that no notice was given by the Applicant of her early removal. No discussions took place. The Applicant is liable for the entire rent during the period of the Notice to Leave that the Respondent gave, being 84 days ending on 6 April 2024. Because the Applicant moved out early the Respondent had to make preparations quickly to sell.

3.2 The parties made no further submissions.

#### **Findings in Fact**

4.1 The Tribunal made the following findings in fact:-

- i. The Respondent leased the Property to the Applicant in terms of a Private Residential Tenancy Agreement ("the PRT") that commenced on 28 March 2022.
- ii. In terms of the PRT the Applicant paid to the Respondent a deposit of £1500.
- iii. The deposit was lodged with and held by My Deposits Scotland.
- iv. On 10 January 2024, the Respondent served on the Applicant a Notice to Leave on the ground that the Respondent intended to sell the Property stating that an application for the Applicant's eviction from the Property would not be raised before 6 April 2024.
- v. The Applicant vacated the Property and returned the keys to the Respondent on 2 February 2024.
- vi. During the PRT the Applicant spilled a cup of tea on the lounge carpet within the Property as a result of which the Respondent incurred carpet cleaning costs following the Applicant vacating the Property for which the Applicant is liable.
- vii. The lounge carpet cleaning costs were £40 which are reasonable.
- viii. In terms of Clause 34 of the PRT the Applicant agreed not to smoke or permit visitors to smoke in the Property without the prior written consent of the Respondent.
- ix. The Respondent did not give consent to smoking in the Property.
- x. The Respondent smoked in the Property as did her guests.
- xi. As a result of the Applicant and her guests smoking in the Property nicotine and smoke damage was caused to the decoration in the kitchen, lounge and hallway as a result of which the Respondent required to have a contractor, All & Dec, redecorate those rooms following the Applicant's removal from the Property.
- xii. The decorating costs relative to the kitchen, lounge and hallway are £165, £495 and £475 which are reasonable and for which the Applicant is liable.
- xiii. Any remedial work required to the bathroom window following the Applicant's removal from the Property arose as a result of fair wear and tear.
- xiv. In terms of the PRT rent was payable on the 28<sup>th</sup> day of each month in a sum of £750.
- xv. The rent payable on 28 January 2024 was £750 for the period to 27 February 2024, being a period of 31 days.
- xvi. For the period 28 January 2024 to 2 February 2024 when the Applicant vacated the Property the rent due is £96.77.

- xvii. The Applicant did not serve on the Respondent written notice to leave the Property under sections 48 and 49 of the 2016 Act.
- xviii. On 17 January 2024 the Applicant emailed the Respondent stating to the Respondent that she would be vacating the Property before the end of the period stated in the Respondent's Notice to Leave.
- xix. The Applicant vacated the Property on 2 February 2024.
- xx. The Applicant is liable to the Respondent for a further 28 days rent being the period of notice that the Applicant ought to have given to the Respondent in writing in terms of Section 49 of the 2016 Act, being £677.42.
- xxi. Both parties made a claim on the deposit at the end of the tenancy. Rather than referring her claim to the dispute resolution scheme operated by My Deposits Scotland the Applicant agreed to the deposit being released to the Respondent in order to pursue this application before the Tribunal.
- xxii. The sums due by the Applicant to the Respondent are summarised as follows:-
 

➤ Lounge carpet, cleaning costs of the Respondent	£40.00
➤ Lounge paintwork	£495.00
➤ Kitchen paintwork	£165.00
➤ Hallway paintwork	£475.00
➤ Rent 28 January – 2 February 2024	£96.77
➤ 28 days rent from (and including 3 February 2024)	<u>£677.42</u>
	<u>£1,949.19</u>
- xxiii. The sums due by the Applicant to the Respondent exceed the deposit which the Respondent is therefore entitled to retain in full.
- xxiv. No sums are due by the Respondent to the Applicant.

### **Reasons for Decision**

- 5.1 In terms of the application as framed the Applicant seeks an order for payment of £1500 (being the deposit paid by the Applicant and refunded to the Respondent in full) under deduction of rent due by the Applicant to the Respondent for the period from 28-31 January 2024 which the Applicant states to be £80.
- 5.2 During the Hearing the Applicant conceded various additional sums to be due to the Respondent, namely:-
 

➤ Lounge carpet, cleaning costs of the Respondent	£40.00
➤ Lounge paintwork	£495.00
➤ Kitchen paintwork	£165.00
➤ Rent, 1 and 2 February 2024	
- 5.3 The following issues therefore remained outstanding for determination:-
  - i. Liability for paintwork to hall and bathroom
  - ii. Any liability for the skirting board said to be missing
  - iii. Any liability for the repair costs to the bathroom window
  - iv. Liability for rent from 28 January 2024.
- 5.4 With regard to the paintwork, in that the invoice of All & Dec dated 12 April 2024 referred to stain block being used in the hallway and not the bathroom the Tribunal concluded that there were nicotine stains in the hallway but not the bathroom. The Tribunal had no other evidence available to it other than the oral evidence of the parties regarding the condition of the hallway and bathroom at the beginning and end of the tenancy but was persuaded by the invoice of All & Dec that, on the balance of probabilities, the hallway was nicotine stained but the bathroom was not. The Tribunal therefore considers the Applicant to be liable for the cost of the paintwork in the hallway and that the sum incurred by the respondent in that connection, namely

- £475.00, is reasonable particularly having regard to the costs of painting the lounge with the Applicant conceded.
- 5.5 The Tribunal could not reach and did not require to reach a view on whether the any part of the skirting board in the kitchen was removed or otherwise. It did not matter. The Respondent had not incurred any loss even if the skirting board had been partly removed as, on her own admission, that part was not replaced prior to the Property being sold by the Respondent. Accordingly she did not sustain any loss.
- 5.6 With regard to the bathroom window, the Respondent appeared to be of the view that the Applicant's failure to report any issue with the bathroom window meant she is liable for the repair costs of £50. That is not right. The Applicant said the bathroom window was stiff to open but she could open it nonetheless. If the mechanism to open the window had indeed failed the Tribunal was not satisfied on the balance of probabilities that this was anything other than wear and tear for which the Applicant is not liable. No evidence to the contrary had been provided, for example, establishing misuse by the Applicant. The Applicant has no liability for the remedial costs incurred by the Respondent relative to the bathroom window.
- 5.7 In terms of the PRT rent was payable on the 28<sup>th</sup> day of each month in a sum of £750. The rent payable on 28 January 2024 was £750 for the period to 27 February 2024, being a period of 31 days. For the period 28 January 2024 to 2 February 2024 when the Applicant vacated the Property the rent due is £96.77 not £80 as the Applicant maintains.
- 5.8 The Applicant did not serve on the Respondent written notice to leave the Property under sections 48 and 49 of the 2016 Act.
- 5.9 On 17 January 2024 the Applicant emailed the Respondent stating to the Respondent that she would be vacating the Property before the end of the period stated in the Respondent's Notice to Leave.
- 5.10 The Applicant vacated the Property on 2 February 2024.
- 5.11 The Applicant is liable to the Respondent for a further 28 days rent being the period of notice that the Applicant ought to have given to the Respondent in writing in terms of Section 49 of the 2016 Act, being £677.42.
- 5.12 Both parties made a claim on the deposit at the end of the tenancy. Rather than referring her claim to the dispute resolution scheme operated by My Deposits Scotland the Applicant agreed to the deposit being released to the Respondent in order to pursue this application before the Tribunal.
- 5.13 The sums due by the Applicant to the Respondent are summarised as follows:-
- |   |                  |
|---|------------------|
| ➤ Lounge carpet, cleaning costs of the Respondent   | £40.00           |
| ➤ Lounge paintwork                                  | £495.00          |
| ➤ Kitchen paintwork                                 | £165.00          |
| ➤ Hallway paintwork                                 | £475.00          |
| ➤ Rent 28 January – 2 February 2024                 | £96.77           |
| ➤ 28 days rent from (and including 3 February 2024) | <u>£677.42</u>   |
|   | <u>£1,949.19</u> |
- 5.14 The sums due by the Applicant to the Respondent exceed the deposit which the Respondent is therefore entitled to retain in full.
- 5.15 No sums are due by the Respondent to the Applicant.
- 5.16 The application therefore falls to be dismissed.

## Decision

- 6.1 The Tribunal dismisses the application.

## **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.**

**Gillian Buchanan**

<hr/>	<b>23 June 2025</b>
<b>Legal Member/Chair</b>	<b>Date</b>