



**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/25/0985

Re: Property at 40 Maxwell Street, Girvan, KA26 9EJ (“the Property”)

Parties:

Mr Alan Harkness, 40 Maxwell Street, Girvan (“the Applicant”)

Miss Cheryl Cooper, 4 Cuddieston, Girvan, KA26 0EN (“the Respondent”)

Tribunal Members:

Alison Kelly (Legal Member) and Sandra Brydon (Ordinary Member)

Decision

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

Background

1. The background to the case is given in the various Case Management Discussion Notes. In summary, the Applicant seeks payment of the sum of £3277.60, which he alleges are the costs he has incurred for damage caused by the Respondent during the tenancy.
2. The Respondent raised a separate action against the Applicant under the Tenancy Deposit Schemes (Scotland) Regulations 2011. The case reference was FTS/HPC/PR/24/1748. The Tribunal decided in favour of the Applicant and made an order for payment against the Respondent in the amount of £900.
3. Documents lodged by the Applicant, and to be relied on at the Hearing, were
 - Invoice from Carpetmaster dated 16th March 2024 in the amount of £1277.60

- Invoice from James King, Joiner, dated 30th April 2024 in the amount of £1750
 - Invoice from JN Ross Decorator dated 30th April 2024 in the amount of £249.88 (which the Applicant rounded up to £250 in his calculations)
 - Written Submission accompanying application with pictures
 - Statement purporting to be from Michelle Scobie
4. Documents lodged by the Respondent, and to be relied on at the Hearing, were:
- Written Submission lodged 1st August 2025 with photographs
 - Copy text messages between the parties

Prior to Hearing

5. The parties were notified by the Tribunal of the date for the Hearing on 26th June 2026.
6. On 19th July 2026 Mrs Edens, the Applicant's representative, contacted the Tribunal's administration asking how to proceed with her witnesses, and whether she needed to contact them or if the Tribunal did it. On 21st July 2026 an employee of the Tribunal's administration team emailed Mrs Edens to advise that she would need to provide a list of witnesses together with their contact details. Mrs Edens replied that evening giving three names and asking what information regarding the witnesses was required. On 22nd July 2026 an employee of the Tribunal's administration team emailed Mrs Edens to advise that email address and postal addresses for the witnesses were required. On 22nd July 2026 at 21.16 Mrs Edens sent an email to the Tribunal with email addresses for two of the three witnesses.

Hearing

7. The case called for a Hearing on 23rd July 2026. It was conjoined with application CV/24/1750, which was an application by the Respondent against the Applicant for repayment of her deposit.
8. The Applicant did not appear, but was represented by his friend, Michelle Edens ("ME").
The Respondent appeared and was represented by Mr David Anderson of Ayr Housing Aid Centre ("DA").
9. The Chairperson explained the procedure that would be followed and confirmed that the late lodging of the witness list was a preliminary issue to be dealt with. She explained that in terms of Rule 22 of the Tribunal's Procedural Rules a party must send a list of any witnesses that the party wishes to call to give evidence no later than 7 days prior to any hearing. To allow it late, the Tribunal must be satisfied that the party has a reasonable excuse.

10. DA said that he objected to the List of Witnesses being lodged late. He had not had sight of it, did not know who was on it, and had not had the opportunity to prepare his case in light of it.
11. ME said that in the letter notifying her of the Hearing it said that she would be given further instructions. She did not hear anything and that is what led her to contact the Tribunal on 19th July 2026. She asked what she should do, was told to lodge the list, and she had done so. The Tribunal looked at the terms of the letter and could not see where ME had drawn the inference from that further instructions on how to conduct the case would be given.
12. The Chairperson referred to the Direction which had been issued in relation to a previous calling of the case, dated 2nd September 2025, in which the Applicant had been ordered to provide a list of any witnesses that he wished to call to give evidence at the Hearing and to make arrangements for the attendance at the Hearing of any such witnesses, with the list to be lodged 21 days before the Hearing. She asked why taking that in to account, ME had not lodged the list in time. ME said that she did not recall seeing the Direction.
13. The Tribunal adjourned for a short period to consider the point. The Tribunal decided not to allow the List of Witnesses or allow the Applicant to call the witnesses at this late stage. Details had only been provided by the Applicant after close of business hours the day before the Hearing, and even then, the full details requested had not been provided. In addition, it would not be just to the Respondent as no fair notice had been given and there had been no time for preparation.
14. DA confirmed that the Respondent would not be giving evidence.
15. ME gave evidence. She said that she had been going in and out of the property for over twenty years, as a friend of the Applicant. She could recall that it had been rented out to one other tenant before the Respondent. She had been in the house in the period between tenants. She had asked the Respondent to allow her in to inspect the property in the years before the tenancy came to an end, but the Respondent had not given access. She said that she only saw the inside of the property on the eviction date, 15th March 2024.
16. ME said that she only took a few pictures on 15th March 2024. She had not anticipated that she would require them as she had not anticipated that matters would end up before the Tribunal.
17. ME referred to the statement purporting to be from Ms Scobie. DA objected. The Tribunal refused to allow the statement to be referred to as it was neither dated nor signed, and therefore not probative.
18. ME said that she had been in the property just before it had been let to the Respondent. She said that it was in a good state of repair. The carpets were

not new, she could not say when they had been laid, but they were almost like new. The kitchen units were in a good state of repair and the décor was fresh.

19. ME made reference to the photos she had lodged. She confirmed that they had all been taken by her on the eviction date, 15th March 2024.
20. ME said that Picture 2 showed damage to the living room carpet in that it was all frayed in the middle. She said that there were several other areas like that and that all the carpets, being the living room, two bedrooms and the hall, had to be replaced. This was due to fraying and staining. She said that Picture 1 showed damage to the lino in the kitchen, near the back door, and Picture 3 showed damage to the lino in the bathroom. She referred to the invoice from Carpetmaster to show the cost of replacement.
21. ME said that the tenancy had lasted 7 years, and she thought that the previous tenant had been in for a year. She confirmed that there was no check in inventory when the Respondent moved in. Everything had been done in good faith, and the rent had never been increased. She could not say how long the carpets had been down prior to the Respondent moving in.
22. In relation to décor, ME referred to Picture 4. She said that there were space, indentation, marks and holes in all the rooms and that full décor was required. The invoice from JN Ross Decorator showed the cost of materials. The Applicant was not seeking the cost of doing the work.
23. In relation to the invoice from James King, Joiner, ME said that the front door had to be fixed as it was not working right. She did not give further specification of what was wrong with it.
24. ME referred to Picture 3 and said that the bath panel was hanging off and was held on by masking tape, and it had to be replaced.
25. ME referred to Picture 1. These were pictures of the kitchen doors. She said that all the doors were in a state, with the vinyl peeling off. Some were worse than others. The drawers were in a similar state. It was cheaper to replace all the doors than it was to repair them. She said that she did not know when the kitchen had been installed, but the units had not been damaged when the Respondent moved in.
26. ME referred to Picture 5, which were pictures of the fence and sheds. She said that they had not been painted at all during the term of the tenancy and they had rotted. She also referred to Picture 6, which was of the fascia at one part of the house. She said that a lack of painting had also caused it to rot. When asked, she could not say where the obligation on the Respondent to maintain these items came from, but she would check before making submissions.
27. ME referred to the loft hatch. She said that she did not have a picture, but the hatch had to be replaced as the lock and mechanism was broken.

28. DA did not wish to cross examine ME. He said that the Tribunal had covered all the questions which he was going to ask.
29. There was a short break to allow ME to check the tenancy agreement.
30. ME said that she had checked the tenancy agreement. The copy she had did not contain the full text of clause 2.1. She referred to clause 2.3 in relation to keeping the interior of the property clean and in a good state and not causing damage, and clause 2.4 in relation to the obligation to yield up the property at the end of the tenancy in the same state as they were at the beginning. She said that there was no way the Respondent would have moved in to the house in the state that it was in at the end of the tenancy. She had seen it beforehand and it was not like that.
31. The Tribunal pointed out that clause 2.4 goes on to mention fair wear and tear. ME said that fair wear and tear means the odd scuff or dirty marks, not a broken bath panel or cabinets hanging off. In her submission the Respondent was responsible for the costs incurred.
32. DA referred to the Written Submission lodged on 1st August 2025. He confirmed that this summed up the Respondent's position. He referred to the photographs. The Tribunal took the view that the Respondent had not given evidence to confirm that she took the photographs, and the date on which they were taken, so they could not be referred to.
33. DA submitted that any damage was as a result of fair wear and tear. There was no check in or check out inventory to verify the position. He said that the outside structures were not part of the tenancy. He said that the normal course was for claims such as this to be handled by mediation through the tenancy deposit scheme, and the Applicant, by not lodging the deposit in a scheme, had deprived the parties of that opportunity. He submitted that no sum was due by the Respondent.

Findings in Fact

- a. The parties entered in to an assured tenancy agreement in relation to the property;
- b. The tenancy commenced on 23rd June 2017;
- c. The Applicant paid the Respondent £400 by way of a deposit;
- d. The Respondent did not lodge the deposit in an approved scheme in terms of the Tenancy Deposit Schemes (Scotland) Regulations 2011;
- e. The tenancy came to an end on 15th March 2024;
- f. No Check In Inventory was prepared at the commencement of the tenancy;
- g. No Check Out Inventory was prepared at the end of the tenancy.

Reasons for Decision

34. The onus of proof lies on the Applicant in this case. It was unfortunate that the Applicant was not available to give evidence. ME gave evidence. The Tribunal had no reason to doubt her credibility or reliability. However, the evidence she gave did not provide enough description or specification to allow the Tribunal to make findings in favour of the Applicant. The lack of a Check In Inventory and the lack of photographs at the end of the tenancy is a hindrance.
35. In relation to the carpets and flooring there was no evidence before the Tribunal as to how long they had been down. There was only one picture. The Tribunal was not able to properly assess any damage and the need to replace the carpets and flooring, or to assess any element of wear and tear. Accordingly, the Tribunal could not make any award to the Applicant in relation to carpets or flooring.
36. In relation to décor there was no evidence before the Tribunal as to when the property had last been decorated. There were few pictures. The Tribunal was not able to properly assess any damage or to assess any element of wear and tear. It is not inconceivable that a property will need redecorated at the end of a tenancy of seven years' duration. Accordingly, the Tribunal could not make any award to the Applicant in relation to redecoration.
37. In relation to fencing, sheds and fascias the Tribunal could find no basis in the tenancy agreement to suggest that the Respondent was responsible for their maintenance. The fascias in particular form part of the outside of the property and are therefore the responsibility of the landlord. Accordingly, the Tribunal could not make any award to the Applicant in relation to these items.
38. In relation to the front door, bath panel and loft hatch there was no evidence before the Tribunal as to what the actual damage was. ME said that the items were broken, but there was no further detail. Accordingly, the Tribunal could not make any award to the Applicant in relation to these items.
39. In relation to the kitchen cupboard doors, there was some photographic evidence of damage, and there was some evidence from ME that there was damage. However, there was no evidence of the age of the kitchen cabinets, the full extent of the damage, (ME having said that some were worse than others), or a report confirming what may have been the cause of the peeling. The Respondent's position in the Written Submission was that it could be caused by temperature change and steam. The Tribunal was not able to properly assess any damage or to assess any element of wear and tear. Accordingly, the Tribunal could not make any award to the Applicant in relation to the kitchen cupboards.
40. On the basis that the Tribunal is not able to make an award the application falls to be 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.

Alison Kelly

Legal Member/Chair

Date: 30th July 2026