

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

Chamber Ref: FTS/HPC/CV/24/0012

Re: Property at 12 Highgate Gardens, Aberdeen, AB11 7TZ (“the Property”)

Parties:

Mr Thomas Ferguson, 114 Faulds Gate, Aberdeen, AB12 5QT (“the Applicant”)

Mrs Marianne Pratt, 42 Great Southern Road, Aberdeen, AB11 7XU (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member) and Frances Wood (Ordinary Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted the Application to the extent of making a Payment Order in favour of the Applicant in the sum of £554.94.

[2] The Applicant seeks a Payment Order of £4,490.57 against the Respondent in respect of the costs of making good damage to the Property under a tenancy agreement between the parties. The Application is accompanied by documentary evidence which includes photographs and invoices. The Applicant is the landlord and the Respondent is the tenant.

Previous procedure

[3] The Application had called previously for a Case Management Discussion (“CMD”) and a Hearing which had to be adjourned due to the late production of evidence.

The Hearing

[4] A further Hearing was then scheduled for 10 am on 29 July in Aberdeen Sheriff Court. The parties were both present. Ms Pratt also had her solicitor, Mr O'Neill present. Neither party had any preliminary matters to raise and the Tribunal began hearing evidence and working through the issues in dispute.

[5] There were nine issues in dispute which were lettered "A to I" in the Application and answered in such manner in the Respondent's written representations.

[5.2] The first two issues raised were accepted by the Respondent as valid heads of claim and unopposed. However, they were issues that were covered by the relevant tenancy deposit, and which had been managed by the relevant tenancy deposit scheme. The Tribunal therefore did not require to consider those issues. The same applied for a general cleaning charge labelled H in the Application. The Tribunal considers it appropriate to work through the issues in turn and comment on the evidence given by both parties on the matter.

[6] The Respondent elected not to give evidence and indeed left the Hearing abruptly, apparently finding it all too much. Mr O'Neill confirmed that the Tribunal should carry on in her absence and he continued to represent her. No evidence was therefore heard from the Respondent.

[7] Items C and D *"Unauthorised removal of floor coverings. The fitted carpets at the beginning of the tenancy were removed without consent from the owner and bare floors were left upon completion of the tenancy."*

[8] The Applicant explained that the Property was let to the Respondent with carpets throughout. He explained that at the end of the tenancy the Property was returned with the carpets having been removed and the wooden floorboards exposed. His evidence was that the carpets were in good condition at the commencement of the tenancy. He explained that he had inherited the Property in 2016 from his late mother. The carpets had been in place at that point and potentially for a considerable time prior. They had been there since at least 2016. The Applicant spoke to a cost of £2,427.55 for replacing the carpets and fitting costs of £347.13. The Applicant produced some photographs which did as a matter of fact appear to show the Property at the end of the tenancy with the carpets removed. In the absence of any evidence from the Respondent, it was somewhat hard to believe that the Respondent had not removed the carpets.

"Item E" Damage to fixtures and fittings. Door facings removed and a sliding cupboard door had been jammed. The Oven mounting had not been secured to the floor. Kitchen cupboard doors required remounting. Door handles had been removed and required fixing."

[9] The Applicant's evidence here was hampered by the fact that there was no reliable check in-or check out report to evidence his claims. He referred the Tribunal to an invoice from a joiner but there the Tribunal could find no basis to conclude that the Respondent has damaged the Property beyond fair wear and tear. The Tribunal carefully examined the photographs which the Applicant supplied but could not find them to be a reliable source of evidence upon which to make any award. The Tribunal in any event could not exclude the possibility that the remedial works instructed would have resulted in an element of "*betterment*" of the Property. The Applicant spoke about missing door handles and issues with a cupboard. The Tribunal however could not accept this part of the Applicant's claim as being legitimate. The evidence was insufficient.

Item F "*work to bring garden back to acceptable standard*"

[10] The Applicant's evidence was that he personally attended to restoring the garden himself. He did not seek to charge for his time, but rather to recover costs incurred for replacement plants and bulbs. He said the Respondent's neglect of the garden killed plants and flowers. Again though, there was no reliable or objective evidence of the condition at all of the garden at the start of the tenancy. The lack of a formal check-in and check-out report again left the Tribunal with little basis to accept the Applicant's account. There were not even pictures of the garden at the commencement of the tenancy.

Item G- "*unauthorised work in kitchen.*"

[11] The Applicant's evidence here again was insufficient. Again, the lack of check-in and out reports presented an immediate difficulty. But the Applicant's account here was somewhat hard to follow. He referred to an invoice which included work in reinstalling the cooker hood. But the Applicant also accepted, later, that the cooker hood was not even attached when the Respondent was in occupation. He spoke about "*tilling*" having been carried out but it was unclear exactly what the Respondent was said to have done and there was certainly insufficient evidence upon which any legitimate finding against the Respondent could be made.

Item I- "*Damage to fixtures and Replacement Grampian £615-00 Photographs*
16.5.23 fittings. Some had been torn, of damaged Blinds others damaged, chains were window
Order form and receipt broken, others held together blinds with jewellery fixings."

[12] The Applicant showed some photos of blinds and an invoice for replacement costs. The Tribunal took the same view about the costs of replacement blinds and the other parts of this head of claim claimed by the Applicant. The Applicant had the relevant invoice but that was insufficient to establish that on the balance of probabilities the Respondent damaged or removed the blinds in the Property beyond fair wear and tear. The evidence here was insufficient for any such finding.

Comment on the evidence

[13] The lack of a reliable check in and out report clearly limited the ability of the Applicant to present his case. However, the Tribunal did not blind itself to those aspects of the case which did seem to have obvious merit. The fact that the Applicant could produce images of the Property with a carpet at the start of the tenancy and images of it without carpets at the end. The Applicant's evidence also made obvious sense. He said he let the Property with carpets and that he recovered possession of the Property without them. The fact that the Respondent choose not to give evidence made it hard to resist the Applicant's account. His invoices also did not seem unreasonable although the Tribunal clearly had to consider the issue of betterment which is considered further below.

[14] Having heard evidence and considered the documentation, the Tribunal made the following findings in fact.

Findings in fact.

1. *The Applicant let the Property to the Respondent by virtue of a Private Residential Tenancy agreement which commenced on 20 March 2019.*
2. *The Respondent vacated the Property in December 2022.*
3. *At some point during the tenancy, the Respondent removed the carpets in the Property without permission.*
4. *The carpets had been in the Property since likely before 2016.*
5. *The Applicant did not accurately record the condition of the Property at the commencement and end of the tenancy.*
6. *Other than by removing the carpets, it cannot be established if the Respondent damaged the Property beyond fair wear and tear.*

Decision

[15] Having made the above findings in fact, it is apparent that the only aspect of the Applicant's case that was successful was the claim in respect of the carpets.

Items C and D *"Unauthorised removal of floor coverings. The fitted carpets at the beginning of the tenancy were removed without consent from the owner and bare floors were left upon completion of the tenancy."*

[15] The carpets cost the sum of £2,774.68 including installation costs. The Tribunal took the view that at the time they were removed by the Respondent, they probably had around 20 per cent of their useful life left before they would have needed replaced in any event. The Tribunal took the view the carpets were generally considered to have a life span of around 10 years. If the carpets were installed in place in 2014 which the Tribunal is basing its decision on by taking a broad-brush approach to the issue of the age of the carpets, then they would have been expected to endure until 2024. But they were removed in December 2022. Again taking a broadbrush approach, this means that the Respondent deprived the Applicant of two years' worth of expected use of the carpets. 20 per cent of £2,774.68 is £554.94. This is therefore the sum the Tribunal awards 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.

Andrew McLaughlin

Legal Member/Chair

10 September 2026
Date