



**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**

**Re: Property at 39E Newbigging, Musselburgh, EH21 7AS (“the Property”)**

**Chamber Ref: FTS/HPC/CV/19/3214**

**Parties:**

**Mr Neil Allen, Mrs Sinthuja Malcolm, 38 Davids Way, Haddington, EH41 3DY  
 (“the Applicants”)**

**Mr Muhammad Umer Waheed, 50/8 Dalmeny Road, Edinburgh, EH6 4QY (“the  
Respondent”)**

**and**

**Chamber Ref: FTS/HPC/CV/20/0621**

**The Parties:**

**Mr Muhammad Umer Waheed, 50/8 Dalmeny Road, Edinburgh, EH6 4QY (“the  
Applicant”)**

**Mr Neil Allen, Mrs Sinthuja Malcolm, 38 Davids Way, Haddington, EH41 3DY  
 (“the Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

- 1) This Decision is issued in two conjoined applications. The earlier of the two applications (CV/19/3214) was by Neil Allen and Sinthuja Malcolm (though in

the Hearings, Neil Allen expressed a preference for being addressed as Neil Malcolm) as tenants against their landlord Muhammad Umer Waheed for return of their tenancy deposit. In response to this application, Muhammad Umer Waheed lodged an application (CV/20/0621) against the Malcolms for damages under the Tenancy Agreement. For clarity, throughout this Decision, Muhammad Umer Waheed will be referred to as “the Landlord”, Mr and Mrs Malcolm as “the Tenants”, and Neil Allen (aka Neil Malcolm) as “Mr Malcolm”.

- 2) Both applications are for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of a sum (respectively by the Tenants for return of the deposit and by the Landlord for damages). The tenancy in question was an Assured Tenancy (said to be a Short Assured Tenancy but it was not relevant to examine any AT5) of the Property by the Landlord to the Tenants which ran from 30 December 2014 “for an initial period of twelve Months and thereafter on a month to month basis” (“the Tenancy”). There was some dispute as to which version of the Tenancy Agreement was the final one but, further to evidence, it did not appear anything turned on this and parties seemed to agree that a copy was signed on 30 December 2014. The Tenancy ran from 30 December 2014 until 1 April 2019.
- 3) The Tenants’ application was dated 9 October 2019 and lodged with the Tribunal by email that day. The Landlord’s application was dated 24 December 2019 and lodged with the Tribunal by email on 21 February 2020. After initial procedure and issuing of Notes of Direction, the applications, as they came before the Tribunal at the Hearing, were accompanied by lengthy submissions setting out the background, a copy of the lease, copy photographs, invoices, emails and text exchanges.
- 4) The Tenants’ application was for an order for £550 being the sum paid by them in deposit. (We do note that this means the Landlord failed to lodge the deposit with an approved tenancy deposit scheme provider, though no application was lodged by the Tenants for any additional sum under the relevant Regulations. They were out of time to do so by the time they lodged their application for repayment of the deposit sum.)
- 5) The Landlord’s application was for a sum of damages under a number of heads of claim. The total of the heads of claim came to £3,500, against which the Landlord conceded the deposit of £550 should be deducted. The order sought was thus £2,950. The Landlord’s application detailed multiple wants of repair in the various rooms of the Property (a two bedroom flat with one bathroom, with use of a cellar and an area of garden ground), along with items said to have been missing, or damaged beyond repair, at the termination of the Tenancy. Further costs of clearance and administration were added. The Landlord provided a spreadsheet that detailed the various wants of repair and other issues and provided itemisation and quantification of the claim in regard to each line item. The spreadsheet broke these claims into three categories: “Replacement Cost” which totalled £310, “Labour Cost” which totalled £2,236, and “Other Cost” which totalled £954. The bulk of “Other Cost” was made up

from various allocations for disposal costs (totalling £310), a cost for garden maintenance of £100, and an allocation for “Administration Costs” of £384.

- 6) The Tenants’ position, prior to the Hearing, was that the costs sought against them were denied in the main. In written submissions, they were willing to concede: that “there may have been minor marks in the lounge”, “they may have left some stickers on a radiator”, and “may have left a child’s bicycle in the storage cellar”. No figure was placed by the Tenants on the concessions they were willing to make. We noted that the Landlord’s quantification of those three items was £300, £50, and £200 respectively and so the parties were clearly very far apart entering the Hearing.

## **The Hearing**

- 7) Following case management discussion and ancillary procedure, the matter was assigned to a Hearing. In all, four full days was required to conclude the evidence plus most of a morning considering final submissions (with parties helpfully providing written closing submissions in advance). All five days of the Hearing of the First-tier Tribunal for Scotland Housing and Property Chamber, were conducted remotely by telephone conference call and over an extended period: 28 August 2020; 20 October 2020; 7 January 2021; and 11 February 2021, with submissions heard on 18 March 2021. At all days of the Hearing, we were addressed by the Landlord’s brother, Muhammad Hassan Waheed, as the Landlord’s Representative. The Tenants were represented by Martin Geary of Haddington Citizens’ Advice Bureau as the Tenants’ Representative. Mr Malcolm was in personal appearance on all days though for the first two and half days he spoke via an interpreter, before making the decision that he was comfortable to dispense with the need for one. Progress during the period when an interpreter was used was thus much more protracted.
- 8) At the commencement of the first day of the Hearing, we sought to clarify whether there was any prospect of agreement on any point between the parties. The only agreement reached was that the deposit of £550 was accepted as due to the Tenants in the event that the Landlord’s claim failed, and due to be applied against the Landlord’s claim should it be awarded to any extent.
- 9) The Tribunal heard from only two witnesses. For the Tenants, we heard from Mr Malcolm. For the Landlord we heard from the Landlord’s Representative, who explained that he had being property manager for the Property for a period prior to the end of the Tenancy, and met with Mr Malcolm to take the keys at the end of the Tenancy. The Landlord’s Representative further explained that he had been involved (though he conceded only to assist) with the works at the Property after the end of the Tenancy. The Landlord’s Representative explained the absence of other witnesses as follows:
  - The Landlord had been in Pakistan at the beginning of the pandemic lockdown and had opted to remain there due to travel difficulties. He had taken the view that the costs of providing evidence by international telephone call would have been prohibitive.

- The previous property manager, Muhammad Usman Waheed, was residing in Pakistan for similar reasons and it was similarly thought to be impractical for him to provide evidence by telephone. Usman Waheed was also a brother of both the Landlord and the Landlord's Representative. He had been principally involved with carrying out the works at the Property post-Tenancy.
  - The main contractor - who was referred to throughout by his first name only: Guntis - had not wished to be called as a witness and the Landlord's Representative had not called him.
  - A representative from the Landlord's solicitor, who was said to have visited the Property in February 2019 (and provided advice to carry out works but then place the Property for sale), was not called as a witness as the Landlord did not wish to incur any fees for their time.
- 10) The Landlord's Representative provided evidence over a number of days. He explained that he had taken over as property manager of the Property some years before the end of the Tenancy, with his brother Mohammed Usman Waheed having acted as agent prior. He had full time employment in a managerial position but assisted with the property management for family members. He described having visited the Property on a limited number of times during the later years of the Tenancy in his capacity as agent. He explained that one visit had been around February 2019 when he visited further to a text from the Tenants regarding mould in the bathroom. He described finding the Tenants cooking, which he believed may have boiling of rice (and thus producing much steam), and described it as an "eye opening moment". His conclusion from the visit was that mould was being caused by a "constant source of moisture" (from cooking and showers) which, combined with the Tenants' failing properly to ventilate and clean the Property, was causing widespread mould.
- 11) The Landlord's Representative acknowledged that he did not carry out a full inspection of the Property in February 2019. He visited again on 1 April 2019 to meet with Mr Malcolm to uplift keys. He described this visit as brief (potentially less than 20 minutes in his recollection) though he said it did allow him to visit all the rooms with most of the furniture removed. He said that he could see marks on surfaces, grease on the stove, shelves not cleaned, and markings and stickers on walls. He said he found the condition of the Property "quite poor" and that he did not see any evidence that the Property had recently received a "deep clean". He did not undertake a full assessment of the Inventory with Mr Malcolm nor did he return later to do so, nor to take photographs.
- 12) He explained that he opened the windows to ventilate the Property fully when he left on 1 April 2019. He believed that this did reduce the mould come the time that Usman Waheed visited to take photographs and commence the works around May 2019. To the Landlord's Representative, this evidenced his theory that the mould was due to poor ventilation by the Tenants.

- 13) He described a visit to the Property by someone from the Landlord's solicitor's office in February 2019. The guidance from the solicitor's office was that it would be better to carry out refurbishment work and then sell. This decision was made by the Landlord in addition because the costs of carrying out the necessary refurbishment work and then reletting would not be economic, due to the length of time it would take to recoup the costs of the necessary refurbishment.
- 14) He explained that due to his own pressure from his employment, he told the Landlord that he would not be able to attend to the full next steps of arranging work to the Property after 1 April 2019. The Landlord's Representative explained that Mohammed Usman Waheed oversaw the refurbishment work, though he did assist, and the Landlord managed the process. The start of the work was delayed as Usman Waheed was out of the country. It was this delay, along with the time to price the work, that resulted in the delay in the Landlord intimating the claim for damages on the Tenants.
- 15) The Landlord's Representative confirmed that the scope of the work carried out to place the Property on the market for sale was greater than the claim being made against the Tenants, and that the Landlord's administrative time was much greater than was claimed. He was taken through the spreadsheet of the claim and provided evidence on which photographs were said to evidence which issues, and which invoices were said to apply to which lines of the claim.
- 16) In regard to items said to be missing or damaged, the Landlord's Representative insisted that all items on the Inventory for the Property would have been of value to the Landlord for use in other properties had they been in usable condition. He disputed that any of the damage to the items listed in the spreadsheet were fair wear and tear though provided little evidence on why he held the damage to have been caused by the Tenants in breach of contract.
- 17) On cross-examination, and questioning from the Tribunal, the Landlord's Representative conceded that the figures for the line items in the spreadsheet were often allocated figures assessed by the family as being an appropriate quantification of the cost of the work. He conceded that reconciling the invoices against the sums in the schedule was not fully possible but he stood by the spreadsheet as an appropriate statement of the losses. In regard to works on the mould, he could not detail them in full but accepted that Guntis had undertaken work next to the window in the hallway that attended to the mould there. He did not know whether penetrating damp had been found there by Guntis or commented on in the Home Report.
- 18) Mr Malcolm provided his evidence over two days of the Hearing. At first, it was through an interpreter though, part-way into his examination in chief by Mr Geary, Mr Malcolm indicated that he preferred to respond without the interpreter. He spoke in clear English though the Tribunal was conscious that this was not his first language and some of his explanations may not have been fully clear as a result. We sought clarification where needed. We were also

satisfied he understood all questions that were put to him in the period after the translator was dismissed.

- 19) Mr Malcolm explained that the Property was his family's first rented property in the UK. He described it having been occupied by a large number of persons when he viewed it before letting. The relevance of this to his evidence was that he described that the Tenants were left with a Property containing a number of items over and above those on the Inventory. He accepted he signed an Inventory (which had been lodged) with Usman Waheed but the additional unlisted items were placed in cupboards or the cellar.
- 20) In regard to the mould, Mr Malcolm disputed it arose from poor ventilation on the Tenants' part. He said that they did open windows as appropriate, but that there was limited ventilation in the bathroom which did not have an extractor fan. He attributed the mould to leaks from the roof space – where the Landlord conceded that there had been a leak from a tank prior to the commencement of the Tenancy. Mr Malcolm also referred to ongoing leaks from the roof space, and thus potentially from the roof, and walls being damp (particularly a wall next to the hallway window). He sought to identify these areas of damp in the photographs lodged by the Landlord.
- 21) He said that they tried to clean the mould up but it would return, particularly in the bathroom. He said they needed to clean every 3 to 4 days to remove the mould. He said that the Landlord's agent had previously put down new sealant round the bath and trapped in old mould. Mr Malcolm attributed, at least in part, the continuing mould in that area to this re-sealing.
- 22) Regarding the level of cleanliness, Mr Malcolm insisted he left the Property clean and free of mould. When shown photographs that appeared to show remaining grime, marks, dirt or discarded items in the Property, Mr Malcolm attributed them all to other causes. For instance he suggested, in regard to different photographs:
  - That marks that appeared to be dirt were in fact markings on the floor from use.
  - That discarded items and dirt in cupboards was from use by workmen.
  - That the fridge he had cleaned must have been removed and replaced with an old dirty fridge that had been stored in the cellar.
  - That the hob he had cleaned must have been removed and replaced with the old hob that had been stored in the cellar. (It was accepted by the Landlord that there had been an historic repair of the hob but only that one ring, and not the entire hob, had been replaced.)
  - That rubbish seen in a photograph of a bin within the Property was all recycling items that he had placed outside for collection but which, after he had left, someone had brought back into the kitchen.

Mr Malcolm did make concessions in regard to marks on doors and surfaces. Along with the concessions made prior to the Hearing, he made an additional, partial, concession that a photograph from the kitchen, that appeared to be pen scribbles on the door of a unit, may have been carried out by one of his children.

- 23) Regarding items left at the Property, Mr Malcolm either insisted that he did not recognise the items shown in the photographs, that that they were not present when he had left the Property, or that they were part of the items left by previous tenants. In regard to the cellar, he insisted that – contrary to the Landlord’s position – it was a communal cellar. Some of the items photographed in the cellar were not, in Mr Malcolm’s evidence, his family’s. He said that some items were boxes for recycling which he had removed from the Property and placed there (being the claimed source of the rubbish described in the previous paragraph); some were items which he took to belong to other occupiers or previous occupiers; and he conceded the children’s bicycle had been left by the Tenants.
- 24) In regard to items said to be missing or damaged, in regard to each item Mr Malcolm either denied the claim, said it was fair wear and tear, or explained that the item had been disposed of during the Tenancy due to having worn out (and that any replacement item was paid for by the Tenants and theirs to remove). In regard to a missing shower head that was claimed, Mr Malcolm recounted a specific recollection of the Landlord’s Representative using the shower head to spray off “dust” in the bathroom on 1 April 2019. He described this occurring during the visit to collect keys which he recalled as lasting between 45 and 60 minutes.
- 25) Mr Malcolm gave evidence that he had received a positive reference prior to leaving the Property (on 7 March 2019) and did not receive any claim for damages until mid-July 2019. Prior to then, he had requested return of his deposit from Mohammed Usman Waheed by text and not given any suggestion that there was an issue. He clearly saw these points as being in contradiction to a Landlord whom, from February 2019, was said to have been concerned about the condition of the Property.

### **Findings in Fact**

- 26) On 30 December 2014 the Landlord let the Property to the Respondent by lease (stating it was a Short Assured Tenancy) with a start date of 30 December 2014 and for a period of 12 months, then continuing month to month until terminated (“the Tenancy”).
- 27) The Tenants resided at the Property until on or around 1 April 2019.
- 28) Under the Tenancy, the Tenants were to make payment to the Landlord of a deposit of £550 and did so.
- 29) The Landlord holds a deposit of £550 for the Tenants, not held within an approved tenancy deposit scheme provider.
- 30) The terms of the Tenancy include at clause 8)a) a provision that: “The Tenant(s) accept the property in its present state as being in a good and habitable condition... At the end of the tenancy, the Tenant will be responsible for any damage (other than fair wear and tear) to the property including fixtures

and fittings or damage to, or loss of, any moveable item(s) as may be evidenced by said Inventory”.

- 31) The terms of the Tenancy include at clause 8)e) a provision that: “Should the Tenant(s) know of any damage caused to the flat either maliciously or accidentally, they should let the Landlord/Agent know immediately...”.
- 32) The terms of the Tenancy include at clause 8)g) a provision that: “On leaving the property, it is the Tenant’s responsibility to ensure his/her room is clean and tidy to prevent the costs involved being deducted from the deposit.”
- 33) The terms of the Tenancy include at clause 13)a) a provision that: “Under no circumstances will any Tenant(s) place nails or tacks on the walls. Any damage to the walls will result in the appropriate loss of deposit.”
- 34) The terms of the Tenancy include at clause 13)e) a provision that: “The Tenant(s) agree to pay the whole cost of repairing, replacing or redecorating any part of the property or its contents and furnishings which is required as a result of the Tenants’ breach of, or failure to fulfil or observe any of the conditions of this Lease.”
- 35) The terms of the Tenancy include at clause 15) the following provisions:
  - “THE TENANT AGREES TO THE FOLLOWING:
  - “a) To keep the property in a clean and tidy condition and properly aired at all times.
  - ...
  - “n) Where a garden is provided... as an integral part of the property, the Tenant will be responsible for their equal share of the upkeep.
  - ...
  - “p) When a Tenant leaves the property, the Tenant must remove all possessions from the property...”
- 36) When visiting the Property in or around February 2019, the Landlord’s Representative noted evidence of mould in a number of rooms, including the bathroom.
- 37) The bathroom in the Property did not possess an extractor fan.
- 38) When leaving the Property on or around 1 April 2019, the Landlord’s Representative collected keys from Mr Malcolm but did not carry out a full inspection of the Property. The Landlord’s Representative noted there remained evidence of mould in a number of rooms on that visit.
- 39) There are a number of potential causes for mould within a residential property, including poor ventilation being available; available ventilation not being correctly used; and water ingress.

- 40) In or around May 2019, Mohammed Usman Waheed took a number of photographs of the condition of the Property. The said photographs evidenced the condition of the Property at that date including:
- Some remaining evidence of mould, especially: around the bath; around window frames; and adjacent to windows in the hallway and bedroom 2.
  - Dirt and grime remaining, especially in the bathroom, kitchen, and kitchen cupboards.
  - Marks, including sticker marks, on a number of walls and fixtures.
  - A piece of trunking, shielding an electrical cable, having been broken in the living room.
  - An electrical heater removed from the wall and stored in a cupboard.
  - Personal items of the Tenants having been left within cupboards in the Property.
  - A children's bicycle belonging to the Tenants having been left within a storage cellar.
  - The garden lawn being slightly overgrown and unkempt at its edges, especially around the garden shed.
- 41) There was no material occupation of the Property for purposes of work or inspection between the visits by the Landlord's Representative to collect the keys on 1 April and that of Usman Waheed to take photographs.
- 42) The condition of the Property detailed at paragraph 40 constitute breaches of the Tenants' obligations in regard to the condition of the Property at termination of the Tenancy.
- 43) The Landlord asked his brother, Mohammed Usman Waheed, to act as his agent to undertake works to the Property to attend to remediation works to address the breaches of the Tenancy. Usman Waheed and the Landlord's Representative carried out such work in the Property. Usman Waheed in turn engaged contractors to assist them. This included cleaning, tradesmen to attend to decoration and electrical works, gardening, and labouring to remove items left at the Property.
- 44) A reasonable cost for cleaning services to address the said breaches of Tenancy would be 5 hours of cleaning services at £25 per hour, totalling £125.
- 45) A reasonable cost for tradesmen to address the said breaches of Tenancy would be £300.
- 46) A reasonable cost for disposal contractors or labourers to address the said breaches of Tenancy would be £100.
- 47) A reasonable cost for gardening labourers to address the said breaches of Tenancy would be £50.

## Reasons for Decision

- 48) We found the Landlord's Representative credible, in that we did not think he were seeking to mislead us, but did not find his evidence particularly reliable. He was focused on a particular explanation for the mould to the exclusion of other explanations. By his own admission, he had needed to step away from attending to the Property after the Tenants had left and had only assisted with the works once they were progressing under the control of Usman Waheed. He had not taken any photographs during any visit to the Property before or after the end of the Tenancy. He appeared knowledgeable about the effect of poor ventilation in contributing to mould growth in a property, but he admitted to no expertise in the area. He did not have the benefit of having taken expert advice on the mould. Where the views of a third party were available (such as seeking evidence from Guntis as to the work he had carried out, or lodging the Home Report for the sale of the Property - which would have at least provided a snapshot of the views of a professional on dampness in the Property at that time), he had not sought this and it was not before the Tribunal from any other source. His evidence, in large part, was hearsay.
- 49) It was more difficult to assess the evidence of Mr Malcolm. Some of his explanations for photographs were extremely incredible. Again, he appeared focused on particular explanations for the condition of the Property (as seen in the photographs) and for the mould. In regard to the mould, his theory derived from an historic leak from a tank in the roof space, though he also suggested ongoing water penetration from outside. Again, he was not informed by having taken any expert advice. His evidence frequently referred to historic issues on seeking repairs from the Landlord but there was no vouching for any of these requests. On general, our decision is informed by the strengths and weaknesses of the evidence for the Landlord rather than Mr Malcolm's evidence.
- 50) Having heard at length from both witnesses, we were simply not able to come to a view, on the balance of probabilities, as to the cause of the mould. Multiple causes may have been at play. Liability by the Tenants for the mould would only arise if they had either caused it by failing to ventilate properly (in breach of clause 15)a)) or if they witnessed something that could be categorised as "accidental damage" caused by mould and failed to inform the Landlord (in breach of clause 8)e)). We were not satisfied that the evidence sustained either. On that basis, any works related to the mould are not recoverable in damages in our view, except in regard to general cleaning issues. In particular, the Landlord's Representative confirmed that a full new bathroom installed due to the state of mould making it more economic to replace the bathroom in order to return it to an appropriate standard. We do not award any costs for work to the bathroom, leaving aside that we lacked evidence that a full replacement of the bathroom was the most economic method of addressing any mould in the bathroom.
- 51) This leaves only the many minor matters of the condition of the Property and garden, the alleged damaged or missing contents, and the alleged removal of items. Looking at this in sections:

- State of cleanliness: We found Mr Malcolm's evidence that the Property was left in a very clean condition to be unreliable when the photographs were considered. His explanations for some of the photographs – such as suggesting that a clean hob and fridge had been switched for dirty ones – were incredible. The bathroom also seemed grimy, but we were willing to accept that discolouration will occur at grouting and sealant in a bathroom over time and will need refreshed routinely. We accepted the Landlord's position that cleaning costs were due by the Tenants, subject to quantification of those costs.
- Condition of walls and surfaces: With reticence Mr Malcolm accepted that his children may have caused some damage to surfaces, which had not been cleaned or repaired by him before leaving. Though the photographs were not always clear, there were more photographs that appeared to vouch damage to walls and surfaces than Mr Malcolm was willing to concede. We accepted that at least some of the photographs evidenced damage that went beyond fair wear and tear. We accepted the Landlord's position that some redecoration costs were due by the Tenants, subject to quantification of those costs.
- Electrical works: We accepted the Landlord's position that replacing the heater and electrical trunking were costs due by the Tenants. We accepted the Landlord's position that costs of an electrical contractor were due by the Tenants, subject to quantification of those costs.
- Disposal costs: Though we were willing to accept, as Mr Malcolm said, that there were more items at the Property when the Tenants moved in than were disclosed on the Inventory, we did not accept his evidence that the only item left by the Tenants was a children's bicycle in the cellar. The photographs disclosed multiple items in cupboards or on surfaces, many of which Mr Malcolm, incredibly, insisted had not been present when he had left the Property. We did not accept that they had left the Property empty (but for the bike and the items that had been present when they moved in). We accepted the Landlord's position that disposal costs were due by the Tenants, subject to quantification of those costs.
- Garden works: Clause 15)n) does not place a high burden on the Tenants. The Tenants merely need to "upkeep" the garden. We did not accept that this necessitated major trimming of the bushes and shrubs, but it would have required the garden not to be unkempt. The sole photograph provided showed the shed with significant (but not in our view unsightly) ivy but the grass looking untidy. We accepted the Landlord's position that some gardening costs were due by the Tenants, subject to quantification of those costs.

52) In regard to what else we did not accept from the Landlord's claim, we excluded a cost for administration. We were not satisfied that the works were so material so as to justify recovery of a management cost by the Landlord. Further, we excluded all costs for allegedly missing or damaged items. The Landlord's evidence on these items did not satisfy us on the balance of probabilities. Our consideration was that the Landlord was hampered in his evidence on this claims by four issues:

- A failure to agree the Inventory on check-out with the Tenants.

- A failure to provide photographic evidence for many of the items said to be damaged.
- A failure to provide convincing evidence as to why some of the damaged items in the photographs (such as door handles that had come loose from a wardrobe, or a missing button on the electric shower) were not – after over 5 years occupation by the Tenants – due to fair wear and tear.
- A failure to provide any material evidence of current value, replacement cost or repair cost. The Landlord accepts that the Property was sold and therefore cleared or materially cleared of items. His position is that all items, even if very second hand, would have had a value to him in other properties. We were unable to assess this assertion due to the lack of evidence.

53) The lack of clear evidence on the part of the Landlord was a further handicap to our determination of quantification. The Landlord's claim could be described as a "Schedule of Dilapidations" but, unlike a schedule prepared by a surveyor, the figures ascribed for each line item is neither the actual cost nor a professionally judged estimate. The selection of invoices and vouching of various costs provided limited assistance. These were for large items such as Guntis' quotation for a series of works through to receipts from well-known stores where only one or two small value items were being claimed. The schedule's attempt to reconcile the vouching to the line items was not possible to follow and we understood the Landlord's Representative to concede, latterly, that they did not actually reconcile. We accept that the Landlord's Representative – who at least assisted with the preparation of the schedule – is not a surveyor and was inexperienced in preparing such a claim. Nonetheless, the evidence provided fell between two stools; it was neither the actual cost incurred nor an estimate which could be supported by the evidence provided. It was a mixture of both and neither. The invoices added up to £2,697.45 and were far from comprehensive. For instance, there was no invoice provided for the electrician's costs and the invoice to Usman Waheed for £610 for "cleaning and handyman jobs" was quite inspecific. (It was unclear who carried out the various labouring tasks, such as the gardening and disposal though Usman Waheed appears to have been involved at least in part.)

54) The invoices did not tie into the schedule which added up to £3,500 (really £3,116 plus rounded up to £3,500 by adding an arbitrary claim for administration costs). The Landlord's Representative assured us that the £3,500 was only part of the works undertaken prior to sale of the Property. Further, it appeared to us that at least some of the £2,697.45 related to works that did not appear in the £3,500 (especially Guntis's quote which appeared to include work to kitchen laminate which we could not see as within the £3,500 claim). Therefore, there was no obvious way to reconcile the invoices against the breakdown and the Landlord's Representative did not seek to do so nor did he concede any position. He insisted on the £3,500 claim in full, though latterly he appeared to proposing the figure as an estimate of reasonable costs for the portion of works incurred due to the Tenants' breaches. This was despite the lack of vouching for even £3,116 of costs incurred. Such an argument would have been easier to countenance if the vouching exceeded the £3,116 set out in the spreadsheet.

- 55) Having determined that there were five areas where we held the Tenants to have been in breach of the Tenancy agreement and for which the Landlord would have incurred costs to remediate (but which costs were not clear from the evidence), we required to assess the damages based on our own experience of similar claims. This is an appropriate approach by us as a specialised tribunal. It is not, however, an ideal one.
- 56) Turning back to the five areas where we determined damages were warranted, we made the following quantifications:
- State of cleanliness: Even if one excludes any additional cleaning to the bathroom (on the basis that it was about to have a full refresh, the costs of which did not fall against the Tenants), we did think a full clean of the Property was merited. For a two bedroom flat, excluding the bathroom, we think five hours by a professional cleaning team is appropriate. We have assessed a cost of £25 per hour for such a team at a total claim of £125.
  - Condition of walls and surfaces: Though we think a full redecoration of the flat may have been required after 5 years of tenancy, we accept that some of this work was required to attend to marks on the walls, removing stickers, and some minor repairs to surfaces. We think a reasonable combined cost of decoration contractors and electrical contractors would be £300.
  - Electrical works: We did not think the works would be likely to take over an hour. We have quantified the cost along with the previous category of works.
  - Disposal costs: As soon as something needs disposed of, there is a cost of disposal, whether it is labouring to remove items and place them ready for pick up by the local authority (where available) or to take to a public dump. We think £100 is a reasonable cost for removal of the limited personal items that appeared to have been left by the Tenants, along with the removal of rubbish after the deep clean of the property.
  - Garden works: We did not see evidence of required works beyond lawn trimming. We think £50 is a reasonable cost for such gardening labour given the apparent small size of the garden.

The total damages are thus £575, against which the Landlord is entitled to retain the whole of the deposit of £550. This leaves £25 remaining due by the Tenants.

## **Decision**

- 57) In all the circumstances, we were satisfied to make the decision to grant an order in favour of the Landlord against the Tenants for payment of £25.00 with interest at 8% running from today's date. This is our disposal in application CV/20/0621.
- 58) This order also attends to the deposit as the Tenants' claim for repayment of the deposit is netted against the damages we have found the Landlord entitled to. We therefore refuse the application CV/19/3214 as – absent the tenancy deposit scheme and solely as a matter of contract - the Landlord was entitled to retain the deposit against his claim for damages.

- 59) As requested by both parties, we have reserved any decision on expenses. A Notice of Direction will be issued in each application providing the parties with a deadline for lodging any motion for expenses in either application. Should no request be made by either party by the deadlines in the Notices, no expenses shall be awarded in either 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.**

**Joel Conn**

7 April 2021

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**Legal Member/Chair**

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**Date**