



**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/19/0968**

**Re: Property at 7 Glen Orchy Road, Motherwell, ML1 5SA (“the Property”)**

**Parties:**

**Mr Graham Hendry, C/O Freelands Solicitors, 139 Main Street, Wishaw, ML2  
7AU (“the Applicant”)**

**Miss Katarzyn Novak, 368 Blackley New Road, Manchester, M9 8FR (“the  
Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for payment in the amount of £410 be  
made.**

- **Background**

An Application was lodged 27 March 2019 by the Applicant’s Solicitor under Rule 70 of the Tribunal’s Procedural Rules seeking payment from the Respondent in the sum of £2,083.89.

Lodged with the Application were

- 1-Copy Tenancy Agreement
- 2-Correspondence between the Parties
- 3-Receipts for work carried out and appliances purchased
- 4-Photographs of the Property before and after the Tenancy

A Case Management Discussion (CMD) was fixed for 5 June 2019. The Respondent in this case had already submitted an Application against the Applicant in this case under the Tenancy Deposit Protection Regulations. The CMD for that case was heard at the same time.

At the CMD on 5 June 2019 it was noted that no attempt at negotiation had been made but that both Parties were open to attempting this. The CMD was adjourned until 11 July 2019 to allow this.

At the CMD on 11 July 2019, the Applicant's solicitor Mr Kane advised that full submissions would be made at a hearing. Mr Kane also outlined the elements of the Applicant's claim and that he may seek to amend by adding alleged rent arrears in the sum of £1,100. Both Parties acknowledged that considerable time and expense would be incurred if a full hearing had to be prepared for and they agreed to attempt a further compromise discussion to see if agreement could be reached.

A further CMD took place on 27 August. The Respondent did not attend and was not represented. Mr Kane for the Applicant explained that negotiations had not been successful and that a full hearing was required.

A full hearing was fixed for 9 October 2019 but was postponed as Mr Kane was not available to conduct it.

- The Hearing

The Respondent did not appear and was not represented. The Applicant was present and was represented by Mr. Kane of Freelands Solicitors.

The Tribunal was satisfied that the Respondent had been given sufficient notice of the Hearing date time and place in terms of Rule 24 of the Tribunal's procedural rules and in terms of Rule 29 the case could be heard in her absence.

The Tribunal asked Mr. Kane to clarify exactly what was sought by the Applicant. Mr Kane stated that the following was sought;

1-Cost of redecoration as per invoice from KBS Painters and Decorators dated 1 March 2018 in the amount of £1,195

2-Cost of replacement of electrical switches and sockets as per invoice from HAC Builders Ltd dated 3 March 2018 in the amount of £310

3-Cost of a replacement cooker in the amount of £588.89 as per invoice from Amazon (undated) with delivery date noted as between 26 February and 8 March 2018

4-£1,100 in respect of one month's rent in lieu of notice

The Tribunal confirmed that they were prepared to accept that the condition of the Property at commencement of the Tenancy was as per the video produced by the

Applicant and also prepared to accept that the standard of décor at the end of the Tenancy was as per the photographs lodged by both Parties.

Mr Kane started by stating that the Tenants had a "duty of care" not to damage the Property. He referred to the oven and stated that the Applicant had needed to replace it rather than simply replacing the smashed glass panel as he did not have sufficient time to wait for a replacement before new Tenants were due to take entry. The Tribunal pointed out that the Applicant had a duty to mitigate the extent of his loss. Mr Kane responded by saying that if the Respondent had reported the damage to the oven door when it had happened the Applicant could have taken steps to repair it. The Applicant confirmed that the oven was 4 years old and that the cost of a new door and fitting would have been £300.

As to decoration costs, the Tribunal asked Mr Kane to direct them to the clause in the Tenancy Agreement which explicitly prohibits Tenants from redecorating the Property. Mr Kane made reference to Clauses 2d, f, g and z. He submitted that those clauses were sufficient to establish that the Respondent did not have the right to redecorate. The Applicant suggested that the specific redecoration carried out by the Respondent could amount to "vandalism". He also noted that several of the walls had to be sanded prior to being redecorated due to the specific personal nature of the work carried out by the Respondent.

The Tribunal raised the point that the Applicant mentioned in correspondence to the Respondent that he had given permission to "gloss". The Tribunal asked how this had come about. The Applicant said that the Respondent had made the request at the start of the Tenancy, asking if she could touch up skirting boards and the kitchen door. The Applicant responded by saying he would supply the paint and the Respondent could deduct the cost from due rent. He did not give permission for any rooms to be redecorated. In summing up, Mr Kane accepted that there is no specific clause in the Tenancy Agreement in this case which explicitly prohibits redecoration, however that the Property should be returned in "clean, tenantable condition".

The Applicant had added in by way of amendment a further claim in the amount of £1,100 which was sought on the basis that the Respondent had not given the correct contractual notice. Mr Kane said that the Respondent was contractually obliged to tenant the Property for 2 years. Clause 8 of the Tenancy Agreement stated that the Tenancy could be terminated either by the Parties at any time by mutual agreement in writing ending the agreement, or by either party on or after the end of the term by giving the other party 2 months notice. He argued that there was never any agreement in writing regarding the termination of the Tenancy. The Chairperson pointed out that the Property appeared to have been let again very quickly, and after some checking it was discovered that the Respondent left the property on 14 February 2018 and new tenants moved in on 15 March 2018.

Mr Kane put forward an esto position that the Respondent had induced the Applicant fraudulently to bring the Tenancy to an end. She had said that the reason she had to leave was that she required to return to Poland as a matter of urgency, but as far as the Applicant was aware now, she did not do so. He considered this to be a straightforward breach of contract.

It was noted by the Tribunal that the Applicant had provided a reference for the Respondent in respect of the Tenancy. The Applicant confirmed that he had provided this at the Respondent's request prior to him viewing the Property.

Mr Kane summed up by confirming what the applicant was seeking and reiterated the reasons why.

- Findings in Fact

- 1-The Parties entered into a Tenancy Agreement in respect of the Property
- 2-The monthly rent was £1,100
- 3-The Applicant incurred costs in the amount of £2,093.89 at the end of the Tenancy
- 4-At the commencement of the Tenancy, the Property was decorated in neutral colours throughout
- 5-At the end of the Tenancy the property had been redecorated in an entirely different fashion, including some sockets and light switches being covered in glitter
- 6-At the end of the Tenancy the oven had a broken glass door panel
- 7-The Applicant retained the deposit in the amount of £1,100

- Reasons for Decision

#### OVEN DOOR

The Tribunal accepted that the Respondent should be responsible for the cost of replacing the glass panel and whilst appreciating that the Applicant required to deal with the matter quickly, this does not entitle him to a full replacement value of a 4 year old item. Accordingly the Tribunal awards the Applicant £300 in this respect

#### DECORATION

The Tribunal took the view that there was no explicit clause in the Tenancy Agreement prohibiting the Respondent from redecorating however it was accepted that the manner of the redecoration carried out was of a style which could not be regarded as acceptable to a broad rental market. Accordingly, the Tribunal decided to award a proportion of the costs incurred by the Applicant in the sum of £900

#### SWITCHES

The Tribunal felt that this was covered in the Tenancy Agreement and awards the full amount requested (£310)

#### PAYMENT IN LIEU OF NOTICE

The Tribunal did not accept the position of the Applicant as it was clear that agreement had been reached for the Respondent to leave on or around the date on which she did so, and that the reason given by her was not relevant. The Applicant was able to re-let the Property very quickly, even given the works that were carried out.

The sum of these amounts is £1,510. However as noted above, the Applicant is already in possession of the deposit in the amount of £1,100 and so an award is made in the sum of £410 to be paid by the Respondent to the Applicant

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### 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

J

Date

11/11/19