

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 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/18/1564

**Re: Property at 12 Elizabeth Crescent, Dornoch, Sutherland, IV52 3NN (“the
Property”)**

Parties:

**Mr Alexander Winchester Henry, 5c Newton Road, Wick, KW1 5LT (“the
Applicant”)**

**Mr Christopher Brandrick, 13 Morton Drive, Lincoln, LN6 0DL (“the
Respondent”)**

Tribunal Members:

Helen Forbes (Legal Member) and Helen Barclay (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 sum of £1,746.78 should
be made in favour of the Applicant.**

Background

This is an application for a payment order in respect of sums arising out of a tenancy agreement between the Applicant and a former tenant in respect of the Property. The tenancy agreement was entered into on 1st September 2017 and it ended on 2nd May 2018. The Respondent is the guarantor for the former tenant in terms of a Guarantor’s Agreement between the parties dated 24th August 2017. The Applicant seeks payment in respect of unpaid rent, the cost of replacing carpets, redecoration of the Property, the cost of uplift of belongings left at the Property, the cost of replacing the locks, and the cost of cleaning the Property.

At a previous case management discussion, it had been established that the arrears of rent were not in dispute. The areas that remain in dispute are whether the Applicant is entitled to claim the cost of replacing the carpets, whether the Applicant is entitled to claim the cost of materials for redecoration, and whether the Applicant is entitled to claim the cost of cleaning the property.

The Hearing

The Applicant was represented by Julie Lindsay and Duncan Black, both Property Management Assistants with Highland Residential. The Respondent was not present. The Respondent had made written representations and had contacted the Tribunal further by email prior to the Hearing. The Respondent had informed the Tribunal that he would not be in attendance. The Tribunal was satisfied that, in terms of Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, the Respondent had notice of the Hearing, and the Tribunal could proceed with the application upon the representations of the party present and all the material before it.

The following documents were before the Tribunal:

- Tenancy agreement between the parties signed on 1st September 2017
- Photographs taken by the Applicant at the start and end of the tenancy
- Photographs taken by the Respondent at the start and end of the tenancy
- Guarantor's Agreement dated 24th August 2017
- Inventory Report with Move in Declaration signed by the Tenant on 1st September 2017 and Move out inspection signed on behalf of the Applicant on 2nd May 2018
- Email from Letting Protection Service Scotland dated 8th May 2018
- Copy letters to the Tenant and the Respondent from the Applicant dated 17th January 2018
- Rent Statement to 20th May 2018
- Correspondence regarding furniture uplift
- Quotations and invoices in respect of locksmith services, carpeting, cleaning and decorating
- Written representations from the Respondent dated 23rd September 2018
- Note of Case Management Discussion and Direction dated 16th October 2018
- Applicant's response to Respondent's representations submitted on 20th November 2018
- Email from the Respondent dated 30th November 2018

As a preliminary matter, Ms Lindsay informed the Tribunal that the Respondent had made payment towards the rent arrears in the sum of £1000 on 23rd November 2018. The amount outstanding was £1901.58, which included £912.55 rent arrears.

The Tribunal heard evidence in relation to the three areas that were in dispute.

The cost of materials for redecoration

By invoice dated 12th June 2018, the decorator sought the sum of £360 for preparation and painting of the hall and living room of the Property. The sum included the cost of £60 for materials. The Respondent did not dispute the cost of the work carried out, but disputed that the sum of £60 in respect of materials was due, as the former tenant had purchased and left paint to the value of £60 in the Property. He wished this sum to be offset against the sum due.

Ms Lindsay said that a pot of paint was found in the Property after the tenant had left. She had no knowledge of whether this paint was used or not by the contractors. She did not believe that it would have been enough paint for the job. The tenant had started to decorate but had left the job incomplete.

The cost of cleaning the property

A quotation dated 18th June 2018 had been provided by a cleaning company, indicating that 10 hours of cleaning was required by one person at £21.50 per hour plus VAT for 'the cleaning of the entire property.' By invoice dated 15th August 2018, the cleaning company sought the sum of £258 in respect of 10 hours of cleaning completed at 16.00 on 13th July 2018.

The position of the Respondent, in his written representations, was that the Property was left in exceptionally clean order, and that the standard of cleaning equated to any cleaning undertaken by a cleaning company. It was his position that the tenant disagreed with any charge for cleaning. The Respondent had provided pictures of some rooms within the Property at the end of the tenancy, in support of his position.

Ms Lindsay said it was difficult to take pictures to indicate the condition in which the Property was left. She said the Property was dusty, the kitchen worktops required cleaning, the bathroom was not clean enough to pass a professional clean and the shower screen required cleaning.

Responding to questions from the Tribunal as to whether she had recorded any of the issues in relation to cleanliness of the Property at the time of inspection following the departure of the tenant, Ms Lindsay said she had not done so. Nor had she taken any photographs of the areas that required to be cleaned. When asked if the cleaning included the inside and outside of the windows, Ms Lindsay said she could only assume so.

The costs of replacing the carpets

By quotation and invoice, both dated 11th May 2018, the carpet contractor had priced the work required at £438 for supplying and fitting a living room carpet, including underlay, and £182 for uplifting and disposing of the porch carpet, re-fitting the existing living room carpet and new underlay in the hall and porch, and fitting door bars. The sums did not include VAT.

The position of the Respondent, in his written representations, was that the carpets in the Property were threadbare at the start of the tenancy, and the tenant had agreed to replace them. She had fitted a new carpet to the living room before leaving. In order to re-decorate, the tenant had removed the fire surround in the living room, and this was why the carpet appeared not to fit the room. The Respondent pointed out that the charges included carpeting the porch and that the tenant had not removed the original carpet from the porch area.

Ms Lindsay said that the tenant had accepted the Property as it was at the start of the tenancy and had not complained about the carpets. The carpets were dated but clean and perfectly suitable for a tenanted property. In or around December 2017, the tenant had decided to replace the carpets. Responding to questions from the Tribunal as to the state of the living room carpet at the start of the tenancy, and the

fact that Ms Lindsay had recorded in the inventory that there was 'heavy wear and tear', she said that the carpets were discoloured where furniture had been placed. She stated that the photographs taken by the tenant showed the carpet in a different light, and they did not reflect the true state of the carpets, making them look much worse than they were.

Ms Lindsay said that an unfitted carpet had been left in the living room at the end of the tenancy. She indicated in a photograph taken by her after the tenancy ended, that the carpet did not meet the walls, and part of it was folded up under a chair. When stretched out, it did not fit the room, as it was too short.

As for the hall and porch, Ms Lindsay said the tenant had removed and failed to replace the hall carpet. The porch carpet had not been removed. The porch and hall carpets had previously matched. It had been decided by the Applicant that, to save costs, the living room carpet left by the tenant would be used to carpet the hall and porch. The costs recharged to the tenant would have been significantly higher if a new carpet had been fitted to the hall.

Additional discussion

The Tribunal noted that the Respondent had referred to a cooker left within the Property by the tenant which was worth 'a few hundred pounds', stating that the tenant would like to know if this was left in the property for the next tenant. Responding to questions from the Tribunal as to the landlord's responsibility, in terms of clause 21.3 of the tenancy agreement to store any property left by the tenant at the end of the tenancy for one month, and to notify the tenant that the property was in storage, Ms Lindsay said she was unaware of this clause in the tenancy agreement; however, Highland Residential did not have contact details for the tenant at that stage and could not have contacted her.

In summary, Ms Lindsay said that the Property was left incomplete by the tenant. The landlord should not have to be responsible for the cost of putting right the work required.

Findings in Fact

1. In terms of the tenancy agreement between the Applicant and the tenant, the tenant was responsible for making good any damage or cleaning found necessary at the end of the tenancy. The tenant was responsible for maintaining the accommodation, its fixtures and fittings and any items set out in the inventory in good condition and in a reasonable state of repair throughout the term of the tenancy. The tenant agreed, by entering into the tenancy agreement, to leave the Property in the same state and condition as it was at start of the tenancy.
2. The Respondent had agreed, by entering into the aforementioned Guarantor's Agreement, to pay and make good to the landlord upon demand all reasonable losses or expenses incurred by the landlord as a result of default by the tenant in the performance or observation of the tenant's obligations under the tenancy agreement.

3. The tenant defaulted in the performance or observation of her obligations under the tenancy agreement, and the Applicant incurred costs as a result of the tenant's default.
4. The sum due in respect of rent arrears was agreed between the parties. This sum stood at £912.55 at the date of the Hearing.
5. The sum sought in respect of materials for painting and decorating the living room was a reasonable loss incurred by the landlord as a result of the tenant's default.
6. The sum sought in respect of carpeting the living room, hall and porch was a reasonable loss incurred by the landlord as a result of the tenant's default.
7. The sum sought in respect of cleaning the Property was excessive and the amount of cleaning required did not exceed four hours of cleaning.

Reasons for Decision

The cost of materials for redecoration

The Tribunal was satisfied on the information before it that the cost of £60 for materials for redecoration of the living room was reasonable. The tenant left the Property in need of redecoration. There was no information before the Tribunal as to whether the paint left by the tenant was used for redecoration. There was no agreement between the landlord and the tenant that any such paint left would be used and the costs of redecoration reduced accordingly. There was no contractual mechanism in the tenancy agreement that would allow the cost of the paint left by the tenant to be deducted from the redecoration costs.

The cost of cleaning the property

The Tribunal was not satisfied on the evidence before it that the costs claimed for cleaning the property were reasonable expenses incurred by the landlord due to the tenant's default. There was scant evidence before the Tribunal to indicate that the tenant had left the Property in a state of uncleanliness that would justify ten hours of cleaning. The Tribunal took into account the photographs of both parties taken at the end of the tenancy and noted that there was no evidence of a lack of cleanliness, although the Tribunal accepted the evidence of Ms Lindsay that it can be difficult to indicate the level of cleanliness in photographs. The Tribunal noted that Ms Lindsay did not record any evidence of a lack of cleanliness while undertaking the check-out procedures. In order to justify ten hours of cleaning, the Tribunal would have expected to see evidence of concerns raised within the check-out notes, and photographic evidence of specific areas that required attendance. The Tribunal accepted Ms Lindsay's evidence that some cleaning was required. The Tribunal decided that four hours of cleaning was justified, and reduced the sum to be awarded to the Applicant by the cost of six hours of cleaning, amounting to £154.80.

The cost of replacing the carpets

The Tribunal decided that the cost of replacing the carpets was reasonable. Although the tenant had left a carpet in the living room, the Tribunal accepted the evidence before it that the carpet was too short for the living room, and the living room required to be carpeted. The tenant undertook to remove and replace carpets and failed to do so. The Tribunal noted that the living room carpet at the start of the tenancy appeared to be in a poor state, with fading and staining; however, the tenant accepted the Property in this condition and was required to leave the Property in a good state of repair when she left. The Tribunal noted that the costs of carpeting could have been much higher had the Applicant not decided to use the living room carpet left by the tenant for the hallway. The Tribunal decided that it was reasonable of the Applicant to match the porch carpet with the hall carpet, given that the tenant had removed the hall carpet.

Additional discussion

The Tribunal noted that the Respondent had not submitted that the value of the cooker should be taken into account in calculating the sums due. In any event, there would seem to be no contractual basis on which the tenant could recover the cost of the cooker from the landlord, and, other than an indicative cost of such a cooker, no evidence was presented of the actual value or working condition of the cooker.

The Tribunal considered the terms of the Respondent's email dated 30th November 2018 where he stated 'I'd also like to acknowledge and accept the invoices supplied by the applicant in place of the quotes supplied in their original submission.' The Tribunal noted that the Respondent did not withdraw his previous representations in relation to areas of disagreement, and stated that he wanted the matter to be 'resolved in good faith.' In all the circumstance, the Tribunal took the view that the Respondent was simply acknowledging and accepting that proper invoices had now been lodged in place of quotes, rather than accepting the sums due in the invoices. It was clear from his email that he expected the Hearing to go ahead and resolution to be reached.

Decision

The Tribunal decided to make an order for payment in the sum of £1746.78 to be paid by the Respondent to the Applicant, thus reducing the sum sought by £154.80 in respect of the cleaning costs.

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.

Helen Forbes, Legal Member

Legal Member/Chair

Date

5/12/18