



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Ac 2014**

Chamber Ref: FTS/HPC/CV/18/2552

**Re: Property at 11 Langhaul Avenue, Crookston, Glasgow, G53 7RW (“the
Property”)**

Parties:

**Ms Sharon Wightman, Flat 0/1, 179 Parklands Oval, Glasgow, G53 7UF (“the
Applicant”)**

**Mr Edward Reavey, Mrs Claire Reavey, 61 Langhaul Road, Glasgow, G53 7SE;
61 Langhaul Road, Glasgow, G53 7SE (“the Respondent”)**

Tribunal Members:

Patricia Pryce (Legal Member) and Janine Green (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an order for payment by the Respondent to the
Applicant in the sum of TWO THOUSAND THREE HUNDRED AND SIXTY-
SEVEN POUNDS (£2,367.16) STERLING AND SIXTEEN PENCE.**

- **Background**

The Applicant attended the hearing along with two representatives, namely, Ms Rebecca Tait and Ms Kudakwashe Chinyani who were both from Strathclyde University Law Clinic. The Respondent attended and was represented by Mr Kenneth Lang, Solicitor.

Ms Valerie Rushford attended as a supporter for the Respondent.

- **The Hearing**

Preliminary Issues:-

1. **The Applicant had failed to advise the Tribunal timeously that he intended to bring representatives, a witness, a mandate signed by his wife and late productions.**

The Applicant's representatives submitted that there had been difficulties within the law clinic wherein their supervisor had not checked their work. Their supervisor had subsequently suffered a bereavement. This had led to a delay. The Applicant himself submitted that he should have instructed the law clinic earlier.

Mr Lang did not object to the late productions as he had seen most of them before and there was no prejudice to his client. However, he did not consider that there was a reasonable excuse in terms of Rule 22 of the Tribunal's Rules of Procedure for the late production of the documents.

2. Mr Lang made a motion to amend the sum sought to £4,326.

Mr Lang submitted that there had been an error made. He accepted that the application sought over £6,000 originally. This was amended by correspondence as referred to within the note of the Case Management Discussion (CMD). He now wished to change it again. The third month of arrears of rent appeared to have been missed out in the re-calculation at the CMD.

The Applicant's representatives objected but did not clarify the basis of their objection.

The Tribunal adjourned to consider matters.

The Tribunal reconvened. The Tribunal determined that, in terms of its overriding principle to act justly, it required to ensure that parties were on an equal footing procedurally. The Applicant was represented by a solicitor of experience whereas the Respondent was represented by two volunteer law students. In addition, the Tribunal required to give proper consideration of the case. In light of this, the Tribunal determined to allow the Respondent's late productions, representatives, the mandate and the witness in the interests of fairness and justice. However, the Tribunal had extended some leeway to the Respondent. It considered that, while not ideal, it was only just to extend some leeway to the Applicant in this matter and allowed the sum sought to be amended to £4,326.

The hearing continued.

After some discussion, the parties agreed that the sum sought in respect of the outstanding rent arrears was accurately £2,056.16. This represented two months' and five days' of rent. The Respondent agreed that he owed this amount of money in respect of rent arrears. He submitted that he had stopped paying rent to try and force the Applicant to lodge the deposit. She had done so but the Respondent admitted that he did not pay any further rent as, by that time, he needed money to relocate his family.

In relation to the £1,000 sought for painting and decoration, the Applicant submitted that the whole property was filthy when the Respondent and his family left. She required to have the whole house painted. She did not accept that the marks on the walls were wear and tear. Had they been wear and tear, she accepted that she could not seek this amount from the Respondent.

The Applicant accepted that she had not produced an inventory in respect of the tenancy agreement for the property.

Evidence of Ms Laura Houston, Witness

Ms Houston submitted that she had been a letting agent for 17 years. She and the Respondent are on the Parent and Teacher Council at their children's school. She accepted that they knew each other but were not "bosom buddies". However, she accepted that she had attended his wedding.

Ms Houston confirmed that the report produced by the Respondent was her report and that she had signed this. She had undertaken an inspection of the property at the request of the Respondent in June 2018. Her opinion was that the property was in a good condition at the end of the Applicant's tenancy. She did not agree that it was in a poor state. She accepted that the carpets on the top floor of the property would have required to be replaced though she could not say in what condition they had been when the property had been let to the Applicant.

Ms Houston considered that the marks on the paintwork were wear and tear, when considering that the living room was located on the first floor of the property which meant that there would be a lot of traffic going up and down the stairs. Ms Houston submitted that she was also a landlord. In her opinion, landlords should expect to redecorate a property when a family of six leaves after 18 months. However, she would not expect a tenant to pay for that type of redecoration.

Ms Houston confirmed that the toilet was damaged.

Ms Houston submitted that she could not say what condition the property was in as at December 2016 as the only time she had ever been in it was when the Respondent asked her to carry out an inspection.

When referred to the email from John Dolan of 30 January 2019 about the poor condition of the property, Ms Houston submitted that the standard of property when trying to sell it tends to be much higher than renting as a seller would be trying to maximise the sale price.

She was referred to the photographs of the property by Mr Lang. She considered that scuff marks on the walls were to be expected. She accepted that the carpets were baldy marked. There were some small holes on a wall though she could not say where these were located. She did not agree that the photographs showed the property as being dirty and damaged. She considered that they showed fair wear and tear after being lived in by a family of six.

Ms Houston submitted that at the end of any tenancy where a family of six had resided in a property for 18 months, any landlord would expect to get in cleaners to clean and to repaint. In her view, it was not a tenant's responsibility to ensure that a property was marketable for sale.

The Applicant submitted that she had instructed the painter to paint the whole property. It was painted white. She accepted that the Respondent had painted a couple of the rooms but submitted that he had done so without permission. She also accepted that he had replaced the carpet in the living room and in the small bedroom.

The Applicant accepted that she had previously lived in the property with only one of her adult daughters. She accepted that there would be far less traffic in the property at that time. She also accepted that the Respondent had redecorated some of the rooms, albeit not to her taste.

Mr Lang submitted that Clause 28 of the tenancy agreement between the parties allowed his client to seek payment for repairs where they were caused by negligence. Given this, the photographs and his client's own account of the condition of the property, he considered that his client had taken account of fair wear and tear but that some of the damage was caused by negligence. This was obvious from some of the markings. He referred to the photograph of the black board which was covering the floor in the main bedroom. There was damage to the flooring. The Applicant submitted that this was caused by a child of the Respondent's jumping from a bed onto the floor. The upstairs carpets were damaged beyond repair.

The Respondent submitted that he had replaced the carpet in the living room and small bedroom. He also decorated the living room, the family room, dining room and small bedroom.

The Respondent submitted that the damage to the main bedroom floor was already there when he took possession of the property. He had agreed with the Applicant that this could remain until he replaced the carpet in this room. However, they never reached this point.

The Applicant accepted that some aspects of the condition of the property were fair wear and tear but others were down to the Respondent's negligence.

As regards the light in the lounge, the Respondent submitted that the only light fitting that had been there was one from Next. This was taken down by him and placed in the garage.

The Applicant submitted that the previous light fitting had been there but could produce no vouchings for that.

The Respondent admitted that the toilet seat was broken. However, he referred to the text conversation he had produced from a carpet cleaner in relation to the carpets not needing cleaned.

- **Findings in Fact**

1. The parties entered into a lease in respect of the property at 11 Langhaul Avenue, Glasgow on 16 December 2016 until the 21 June 2018.

2. The monthly rent in respect of the property was £950 per calendar month.

3. The Applicant paid to the Respondent at the start of the lease £950 by way of a deposit.

4. It was a matter of agreement that the Respondent owed £2,056.16 by way of unpaid rent in respect of the property.

5. The Respondent admitted that the toilet seat was broken in the property when the tenancy ended.

- Reasons for Decision

The Tribunal noted that the parties agreed at the hearing that the Applicant owed £2056.16 by way of unpaid rent.

The Applicant sought £1,000 in respect of painting and decorating. However, other than an entry for the property within Zoopla, there was no photographic evidence of the state of the property at the commencement of the tenancy between the parties. The Applicant accepted that she had not provided a photographic inventory of the property, despite reference to an inventory within the tenancy agreement. The Tribunal considered the photographs before it, the evidence it heard and the report submitted by Ms Houston. The Tribunal determined, on the balance of probabilities, that any painting which was required was as a result of fair wear and tear. By her own admission, the Applicant accepted that any damage of that nature would not be something for which she could seek recompense from the Respondent. In addition, the Tribunal noted that it was agreed that the Respondent had spent money in terms of decorating a number of the rooms within the property. The Tribunal determined to refuse the Applicant's claim insofar as it related to the claim for £1,000 in respect of painting and decorating. The Applicant sought an amount for painting the whole house, despite acknowledging that the Respondent had redecorated a number of rooms within the property during his 18 month tenancy of the property. To claim for the whole property was, in the opinion of the Tribunal, excessive.

The Applicant sought £286 for the cost of replacing carpets. The Respondent considered that the carpets were old when he moved into the property. The Applicant submitted that she had renewed some of the carpets in the two years prior to the commencement of the tenancy. Ms Houston submitted that the carpets in the top floor required to be replaced, in her opinion. Given all of the evidence before it, the Tribunal determined, on the balance of probabilities, that the carpets did require to be renewed. The Tribunal noted that the invoice from the carpet fitter referred to only three carpets. The Tribunal determined to allow this head of the Applicant's claim in the sum of £286.

The Applicant sought £80 by way of a joiner's invoice. This related to works carried out to the floor of the main bedroom together with fixing the toilet seat.

It was a matter of agreement between the parties that the toilet seat required to be replaced at the end of the tenancy. The repair to the toilet amounted to £25. However, the balance of £55 related to a repair to the main bedroom floor. The Respondent was clear that this repair was in situ at the start of the tenancy. The Applicant submitted that this was caused by the Respondent's child. The Tribunal determined, on the balance of probabilities, to refuse the Applicant's request for payment in respect of the repair to the bedroom floor. The Tribunal noted that it was regrettable that the Applicant had not prepared an inventory detailing the condition of the property prior to the commencement of the tenancy.

The Tribunal determined to refuse the Applicant's claim in respect of the light fitting. The Respondent denied that this fitting was located in the property at any time during his tenancy. The Applicant could not provide any vouchings for this.

In conclusion, the Tribunal determined to allow the Applicant's claim in respect of unpaid rent amounting to £2,056.16, replacing carpets in the amount of £286 and replacing a toilet seat at a cost of £25. The Tribunal determined to refuse the others matters for which she sought payment.

- Decision

The Tribunal orders the Respondent to pay to the Applicant the total sum of £2,367.16.

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.

Patricia Pryce

18 March 2019

Legal Member/Chair

Date