

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules) in relation to an application for civil proceedings relative to a Private Residential Tenancy under Rule 111 of the Procedure Rules.**

**Chamber Ref: FTS/HPC/CV/19/2854**

**Re: Whiteside Cottage, Kirkgunzeon, DG2 8JL("the Property")**

**Parties:**

**Mr Paul Gaskell and Mrs Sharon Gaskell residing at Beech Hall Farm, Manchester Road, West Houghton, Bolton, B15 3JD ("the Applicants")**

**G M Thomson & Co ('The Applicants' Representative')**

**Miss Stephanie McCallie and Mr Christopher Dunlop residing at 71 Caulstran Street, Dumfries ("the Respondents")**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")**

**Tribunal Members: Jacqui Taylor (Legal Member) and Janine Green (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment would be issued requiring the Respondent to pay the Applicants the sum of £1875.48.**

**Background**

1. The Applicants submitted an application to the Tribunal for payment of sums due under the lease between the parties in the sum of £5815.48.

**2. Documents lodged with the Tribunal.**

Documents lodged with the Tribunal by the Applicants were:

**2.1** A copy of the Private Residential Tenancy Agreement of the Property between the parties dated 26<sup>th</sup> September 2018.

- 2.2** A copy of the inventory taken at the commencement of the tenancy dated 30<sup>th</sup> October 2018 and 11<sup>th</sup> November 2018 which had been signed by the Landlords agents and Stephanie McCallie.
- 2.3** A copy of the inventory taken by Rebecca Reed dated 4<sup>th</sup> June 2019 after the Respondents had vacated the Property.
- 2.4** A rent statement for the period 28<sup>th</sup> September 2018 to 28<sup>th</sup> June 2019 which showed that the outstanding rent was £1332.40.
- 2.5** An invoice from R B S Peacock dated 25<sup>th</sup> July 2019 for deep cleaning the bathroom, toilet, kitchen, oven and grill. Hoover and Dust the Property on 22<sup>nd</sup> July 2019 in the sum of £120.
- 2.6** An Invoice from Mckie Decorators dated 19<sup>th</sup> July 2019 for fitting 7 sheets of hardboard to the living room floor. Making good the bath panel and reinstating with new PVC lining boards in the sum of £2270.
- 2.7** An invoice from G Sharpe dated 17<sup>th</sup> July 2019 for the uplift and disposal of flooring and underlay and supplying and fitting vinyl to the porch, kitchen, toilet and bathroom. Supply and fit carpets to the lounge, hall, conservatory and 3 bedrooms in the sum of £1600.
- 2.8** An invoice dated 20<sup>th</sup> June 2019 for trimming and tidying the hedge and garden in the sum of £295.
- 2.9** An invoice from WC and Fields dated 20<sup>th</sup> June 2019 for jetting and cleaning block drains in the sum of £150.
- 2.10** A copy of the Notice to Leave served on the Respondents dated 12<sup>th</sup> June 2019.

### **3. Case Management Discussion**

The case had previously called for a Case Management Discussion on 19<sup>th</sup> November 2019. At the CMD the parties agreed the following facts, which were accepted by the Tribunal:-

- 3.1** The Respondents were Tenants of the Property in terms of the Private Residential Tenancy between the parties.
- 3.2** The Tenancy commenced on 28<sup>th</sup> September 2018.
- 3.3** The Respondents had vacated the Property on 1<sup>st</sup> June 2019 without giving the Landlords prior notice. The Landlords thereafter served notice to leave on the Tenants and the parties agreed that the termination date was 12<sup>th</sup> July 2019.
- 3.4** The rent due in terms of the tenancy was £625 per month.
- 3.5** The Respondents had paid a deposit of £625 which had been returned to the Applicants.
- 3.6** The parties agreed that the outstanding rent due is £1380.48

#### **4. Direction**

**4.1** Following the CMD the Tribunal issued a Direction in the following terms:-

*'The Applicants are directed to provide the Tribunal and the Respondents with (i) an updated detailed statement of claim, cross referenced to the inventories an making provision for the condition of the items in the initial inventory, (ii) an explanation as to why it had been necessary for the Applicants to fit 7 sheets of hardboard to the living room floor (iii) evidence that the sums claimed are reasonable.*

*The Respondents are directed to provide the Tribunal and the Applicants with a copy of the receipt from Irvine Hunter in respect of the repair to the drains in November 2018.*

*The said documentation should be lodged with the Tribunal no later than close of business on 20<sup>th</sup> December 2019.'*

#### **4.2 In response to the Direction**

The Applicants provided the Tribunal with the following documents:

- (i) A letter dated 17<sup>th</sup> December 2019 which contained an explanation as to why it had been necessary for the applicants to fit seven sheets of hardboard to the living room floor. The letter stated:

*'Whilst the Landlord accepts that he agreed to have new flooring laid within the bathroom, kitchen and sitting room, after the tenants had taken occupancy. Mr Dunlop and Miss McCallie had failed to pay their rent on time from the commencement of the Tenancy and were at one point issued with a notice to leave due to this. Following this the rent payments were then made and the notice to leave was revoked. However shortly after the Tenants once again fell into rent arrears and therefore leaving the landlord unsure of when he would receive funds to cover the costs of the new carpets/ flooring.*

*When we entered the Property we noted a strong smell of sewage within the bathroom and toilet areas. We discovered that the drains were blocked as the water was failing to drain away. The Landlord instructed WC Fields to attend to clear the blockage. Please see attached report/ email confirming this. Due to the blockage and the force of water that was necessary to clear the blockage this caused water and sewage to back up into the property and then damaging all the carpets in the hallway, sitting room, three bedrooms and sitting room. As you will note from WC Fields email the cause of the blockage was from nappies and wipes which we believe to have been flushed down the toilet by the Tenants. The septic tank to which the property is connected is only utilised by Whiteside Cottage. The Tenants that resided in the Property prior to that tenancy were an elderly couple with no children or grandchildren visiting. The septic tank had been well maintained by the Landlord and emptied regularly and neither us, GM Thomson & Co or the Landlord received any notification that there were issues to the tank prior to Chris and Stephanie vacating the Property. Again, due to the damage caused to the flooring and floor boards in the sitting room the Landlord had to replace the floor*

*boards with the plyboard to make the flooring safe before new carpets could be laid.*

*During the tenancy the Tenants made us aware of a condensation issue within the front porch/ sunroom. On commencement of the tenancy, as per our policies and procedures, we issued the tenants with a mould and condensation advice. We informed the Landlord who was prepared to take further action to alleviate the issue providing the Tenants made adequate efforts to prevent the issue from becoming worse which we advised the Tenants of and referred them to the advice given. The Tenants did not come back to us or reply when asked if the problem had worsened or alleviated.'*

- (ii) An email from Sarah Reay of WC Fields dated 10<sup>th</sup> December 2019 in the following terms:

*'We attended the property Whiteside Cottage on 20<sup>th</sup> June 2019 as we were urgently called out to attend to the drains being blocked.*

*The drains were badly blocked which appeared to be nappies/ sanitary towels causing the issue.*

*We cleared the drains after much effort and Mr Gaskell paid £150 for our service.'*

- (iii) A leaflet headed 'Condensation and Mould Advice for Tenants.'

- (iv) Inventory and Property Record of Condition dated 3<sup>rd</sup> June 2019.

The Respondents did not provide the Tribunal with any documents in response to the Direction.

## **5. Hearing**

5.1 This case called for a hearing at 10.00 on 28<sup>th</sup> January 2020 at Lochvale House, Georgetown Road, Dumfries, DG1 4DF.

The Applicants were not present but their representative Rebecca Reid of GM Thomson attended on their behalf.

Christopher Dunlop, one of the Respondents, was present along with the Respondents' representative Ian Maxwell of Dumfries and Galloway CAB.

No written responses had been received from the Respondents.

### **5.2 The Tribunal identified with the parties that the following items of claim are in dispute:**

(1) Gardening:	£ 295
(2) Redecoration:	£2270
(3) Cleaning :	£ 120
(4) Drains:	£ 150
(5) Carpets etc :	£ 1600

### **5.3 The parties' representations in connections with the items of the claim in dispute:**

#### **5.3.1 Gardening £295**

Ian Maxwell referred the Tribunal to clause 30 of the lease. The clause states:

'30. Private Garden

The Tenant will maintain the garden in a reasonable manner.'

He explained that when the Respondents moved into the Property the garden needed attention. They did not leave the garden in any worse condition than it had been in at the start of the Tenancy. There was an eighteen foot high hedge around the periphery of the garden.

Christopher Dunlop advised that he had a sit on mower and a hedge cutter and when he lived in the Property it would take him perhaps three or four hours to attend to the garden.

Rebecca Reid accepted that the grass was slightly long at the commencement of the lease. She referred the Tribunal to pages 2, 18 and 19 of the moving out inventory which were photographs of the garden ground at the Property. At page 24 of the moving in inventory the description of the lawn and flower beds was 'The lawn surrounds the property to the rear, side and front of the property. The grass would benefit from being cut but due to this time of year this will become difficult to carry out. There are some areas in the lower garden that could be utilised for flower beds or vegetable patches. These do require some attention/ weeding but there was a lot of leaves covering the garden.'

She acknowledged that there was no picture of the hedge in the moving in inventory.

#### The Decision of the Tribunal in relation to the Gardening Bill.

The Tribunal acknowledged that the Respondents were responsible for maintaining the garden in a reasonable condition until the termination date of the lease, which had been determined at the CMD as being 12<sup>th</sup> July 2019. The Tribunal examined and compared the photographs of the garden in the moving in inventory and the moving out inventory dated 3<sup>rd</sup> June 2019 and found as a matter of fact that the grass was in a worse condition in the moving out inventory. They also examined the photographs of the hedge in the moving out inventory and found that the hedge was over grown. They also acknowledged that the moving in inventory referred to the fact that the grass and flower beds required attention. However due to the fact that the Respondents were responsible for maintaining the garden in a reasonable condition for a month after the date of the moving out inventory they found that the Respondents were liable for the full amount of the gardening account of £295.

#### **5.3.2 Redecoration £2270**

The Applicants were seeking payment of the invoice by Decorators dated 19<sup>th</sup> July 2019 in the sum of £2270. The invoice stated:

'For the redecoration of Whiteside Cottage. Price as agreed £2000. Extra works to fit seven sheets of hardboard and fit to living room floor. To make good bath panel and reinstate with new PVC lining boards and trim £270'

Ian Maxwell advised the Tribunal that the Respondents were not liable for the redecoration invoice for the following reasons:

Whilst the Respondents had resided in the Property it had been affected by dampness.

He did not agree with the Applicants position that the hardboard was required as a result of the sewage entering the property when the blockage to the septic tank had

been cleared. In his view the hardboard had been installed to make the living room floor level.

He explained that at the commencement of the lease the Property did not have a bath but a walk-in wet area. The Respondents had agreed with the Landlords that they would buy a bath and the Landlords agreed to fit it. After the bath had been fitted the Respondents had fitted plywood around the end and side of the bath. He advised that the Respondents were not responsible for the cost of supplying and fitting the PVC bath end and side. This had never been agreed with the Applicants.

Rebecca Reid acknowledged that page 19 of the moving in inventory states 'The current shower is to be replaced with a bath that the tenant has provided. The Landlord will pay to have it installed as well as new flooring once the works are completed.'

The Tribunal hearing was adjourned to enable the parties to ascertain the cost of purchasing a replacement bath end and side. Christopher Dunlop advised that the bath was a large six foot long bath. On returning to the hearing the parties agreed that £100 was a reasonable cost for replacing the bath end and side panels.

The parties acknowledged that the Respondents are not liable for the cost of wear and tear to the decoration of the Property and they are only liable for any redecoration due to their negligence. They also acknowledged that the Applicants as Landlords of the Property are responsible for ensuring that the Property complies with the Repairing Standard.

Rebecca Reid referred the Tribunal to the moving in and the moving out inventories.

She highlighted the following defects when the Respondents moved out of the Property:

Sitting Room: There were children's biro drawings on the wall and the wall paper was torn.

Bedroom 1: there was evidence of dampness and mould on the walls. She explained that the Respondents had been given the Condensation and Ventilation advice leaflet when they had moved into the Property. The Tenants had not reported any ongoing problems with dampness.

Bedroom 2: There is discolouration of the paintwork.

Hall: There was patch paintwork to the walls.

She confirmed that the whole property had been decorated after the Respondents had vacated the Property. She estimated that the cost of painting the sitting room would be approximately £200. She estimated the cost of supplying the hardboard flooring to be £50. These figures were accepted by Christopher Dunlop.

#### The Decision of the Tribunal in relation to the Redecoration Bill.

The Tribunal found that as a matter of law the Tenants are not responsible for wear and tear to the decoration of the Property. They also found that the Tenants are not responsible for the cost of redecoration caused by dampness to the Property. The

Repairing Standard requires the Landlord to maintain the Property in a wind and watertight condition.

They noted that the moving in inventory refers to dampness in the bathroom. The Applicants had not provided any evidence to the effect that the Respondents were responsible for the dampness/mould or condensation in the Property. Consequently the Tribunal determined that the Respondents were not liable for the cost of redecoration caused by dampness or condensation.

The Tribunal found as a fact that there was a biro drawing on the wall of the sitting room and that the wall paper was torn. They found that the Respondents were responsible for the redecoration cost of the sitting room which the parties had agreed was £200.

The Tribunal examined closely the photographs in the moving out inventory of the decoration of the bedrooms and the hall and found that they did not provide evidence that the Respondents had been negligent with regards to the decoration of these rooms.

Accordingly the Tribunal found that the Respondents were only liable for £200 of the redecoration invoice.

### **5.3.3 Cleaning £120**

Rebecca Reed explained that the Respondents are liable for the cleaning invoice from R B & S Peacock in the sum of £120 dated 25<sup>th</sup> July 2019. She referred the Tribunal to Pages 7 and 15 of the moving out inventory and the pictures which showed the condition of the kitchen and the bathroom. She explained that the pictures show that the Property was not left as clean as it should have been.

Christopher Dunlop advised that he did not leave the Property in a dirty condition. It was left in a similar condition as when they moved into the Property. Extensive work had been carried out to the Property after the septic tank had backed up and new flooring had been laid. He suggested that the cleaning would have been necessary due to the flooding and also the dust generated by the fitting of the new flooring.

#### The Decision of the Tribunal in relation to the Cleaning Bill.

The Tribunal noted that clause 17 of the lease states that the Respondents must ensure that the Let Property, and its fixtures and fittings are kept clean during the Tenancy. The Tribunal examined the pictures of the kitchen and bathroom at pages 7 and 15 of the moving out inventory and found that the photographs did not show that the kitchen or bathroom were left in a dirty condition. The Tribunal found the picture of the oven to show that the oven was clean.

The Tribunal noted that the date of the cleaning invoice was 25<sup>th</sup> July 2019 and this was after the date the flooding from the septic tank took place on 20<sup>th</sup> June 2019 and also after the date the new flooring was laid on 17<sup>th</sup> July 2019.

As explained later in this decision the Tribunal found that that the Tenant was not responsible for flooding that took place when the drains were unblocked.

The Tribunal found that the Respondents were not responsible for the cleaning costs as on balance they found that the cleaning was required as a result of the flooding of sewage in the Property and the fitting of new carpets and the Applicants

had not provided any evidence that the Respondents had left the Property in an unclean condition.

#### **5.3.4 Drains £150 and Carpets £1600**

Rebecca Reed explained that the Respondents are liable for the invoice from W C Fields dated 20<sup>th</sup> June 2019 for 'Jetting & Cleaning Block Drains £150.'

She referred the Tribunal to the email from Sarah Reay of WC Fields dated 10<sup>th</sup> December 2019 in the following terms:

*' We attended the property Whiteside Cottage on 20<sup>th</sup> June 2019 as we were urgently called out to attend to the drains being blocked.*

*The drains were badly blocked which appeared to be nappies/ sanitary towels causing the issue.*

*We cleared the drains after much effort and Mr Gaskell paid £150 for our service.'*

She advised that the contractor had used a high power hose pipe to clear the blockage and water escaped from a pipe under the bath and flooded the Property.

She explained that in her view the Respondents were liable for cost of clearing the blockage and the damage that had been caused as the Respondents had not advised the Landlord or themselves of any difficulty or problem they had experienced with the septic tank.

She advised that there is no notice in the bathroom or clause in the lease to explain that only human waste and toilet paper should be flushed down the septic tank.

She explained that her company was in regular contact with the Respondents at the start of the tenancy and they had never mentioned any problems with the drains or the septic tank. She found it strange that they could afford to pay £200 to have the septic tank cleared when they were having problems paying the rent that was due at that time.

She advised that Mr Gaskell, one of the Landlords, was present at the Property when W C Fields cleared the blockage. As far as she was aware neither Mr Gaskell nor the contractor checked to see if there was any flooding whilst the high pressure jetting was taking place.

She explained that the previous tenants had been a same sex couple who had resided in the property for three or four months and before them an elderly couple had rented the Property. The previous tenants had not had children or grand children reside at the Property.

She advised that as a result of the flooding of the sewage the existing flooring in the Property had to be removed and new flooring had to be laid. She explained that the Respondents were responsible for the cost of the supply and fitting of the replacement flooring. She acknowledged that the Landlords had agreed to replace



the flooring in the Kitchen, sitting room and bathroom at the start of the tenancy but never did so as there had been a delay in the Respondents making some rent payments at the commencement of the lease.

Ian Maxwell explained that the Respondents had problems with the septic tank shortly after they moved in to the Property. When they received the Direction from the Tribunal asking that they provide a copy of the receipted invoice from the contractor who unblocked the septic tank they contacted the contractor concerned but he was unwilling to provide a copy of the invoice as he does work for the Landlords and he did not want to jeopardise that working relationship.

Ian Maxwell expressed surprise that the invoice from W C Fields does not refer to water damage caused by the clearing of the blockage to the drains.

He also explained that if water backed up through the toilet when the blockage was being cleared it would be the contractor who would be liable for any damage caused. The contractor would have been negligent not to have noticed the over flow from the toilet. In any event he considered it unreasonable to claim the cost of carpeting the whole property due to the septic tank backing up and flooding the Property. He said that it was highly unlikely that water from the pipes under the bath or the toilet would flood to all the rooms of the Property. His client had consulted a plumber who had suggested that at least 5500 litres of fluid would be required to flood all of the rooms of the Property.

He explained that W C Fields are a large company and they should have ensured that someone was in the bathroom of the Property checking to see if any flooding was taking place.

Christopher Dunlop advised the Tribunal that the bathroom of the Property was quite small and they did not change his childrens' nappies in the bathroom. All soiled nappies were placed in nappy sacks and disposed of separately. They were not flushed. Shortly after he moved in to the Property they had experienced a problem with the septic tank. The bath and sink had been slow to flow away. He had advised Mr Gaskell personally of the problem but Mr Dunlop took it upon himself to have the problem fixed. The contractor he employed hosed the drains from the manhole outside the Property and cleared the blockage which seemed to have been caused by a build up of human waste and toilet paper. He confirmed that he had not experienced any further problem with the septic tank after this time. He paid the contractor £200. In response to the comment by Rebecca Reed that she was surprised that he was able to pay the £200 charge as he was having difficulty paying the rent, he explained that his family helped him out with the payments.

#### The Decision of the Tribunal in relation to the Drains Bill and the Carpets bill.

The Applicants are responsible for ensuring that the drains and external pipes are in a reasonable state of repair and proper working order, in terms of the Repairing Standard.

The Respondents would only be liable for the cost of unblocking the drains and the septic tank if the blockage had been caused by their negligence.

Mr Gaskell was present when the blockage had been cleared but did not appear to give evidence to the Tribunal as to what had happened when the flooding had taken place, the cause of the blockage or to confirm or deny the evidence of Christopher Dunlop to the effect that he had told the Landlord of the blockage of the drains at the beginning of the tenancy. The Applicants had been given notice of the Respondents evidence on this point at the Case Management Discussion.

The Tribunal did not consider the email from Sarah Reay of W C Fields to be evidence of the negligence of the Respondents. The email did not explain who Sarah Reay was, her position in W C Fields and whether or not she had been at the Property when the blockage had been cleared. The email did not say how she could confirm that 'the drains appeared to be blocked by nappies/ sanitary towels'.

The Tribunal accepted the evidence of Christopher Dunlop to the effect that he had the drains cleared early in the tenancy and that there had been no difficulty with the drains when they vacated the Property. They also accepted his evidence to the effect that they did not flush soiled nappies. The Tribunal found him to be a credible witness.

The Tribunal found as a matter of fact that the Applicants had contracted to replace the flooring in the Kitchen, sitting room and bathroom at the commencement of the Tenancy but he had never done so. The Tribunal determined that the Respondents could not now be held liable for the cost of supplying and fitting the flooring in these rooms.

Separately the Tribunal did not find the Respondents liable for the cost of the replacement flooring required as a result of the flooding which took place when the drains were being unblocked. The contractors took no steps to mitigate any damage caused. They did not have someone in the Property monitoring if flooding was taking place whilst the drains were being unblocked.

The Tribunal found that the Respondents were not responsible for the invoices for the drains bill or the carpets bill.

## **6. Requirements of Section 111 of the Procedure Rules.**

**6.1** In connection with the requirements of section 111 the Tribunal confirmed that the application correctly detailed the requirements of section **111(a) (i), (ii) and (iii)** of the Procedure Rules namely:-

- (i) the name and address of the Applicant.
- (ii) the name and address of the Respondents.
- (iii) the reason for making the application.

**6.2** The Tribunal also confirmed that the application had been accompanied by the documents specified in **Section 111(b)(i) and (ii) and (iii)** of the Procedure Rules.

## **7. Outcome.**

The Tribunal determined that the outstanding sums due by the Respondents amounted to £ **1875.48** and accordingly they issued an Order for Payment in this sum.

## **8. 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.**

J.Taylor

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.... **Legal Member**

**5<sup>th</sup> February 2020**