



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing Tenancies Scotland Act 2016

Chamber Ref: FTS/HPC/CV/19/3862

Re: Property at 3 North Street, Glenluce, DG8 0QQ (“the Property”)

Parties:

Mr Brian Jardine, Omond, Stapelton Road, Annan, DG12 6LE (“the Applicant”)

Mr Jordan Rennie, Ms Courtney Anderson, 97 Sheuchan Street, Stranraer, DG9 0ES; 97 Sheuchan Street, Stranraer, DG9 0ES (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Linda Reid (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of £1,888 should be made.

- **Background**

This was a hearing to consider the application by the Applicant dated 6th November 2019 for an order for payment in respect of arrears of rent and reimbursement of alleged damage to the Property against the Respondents who were the Tenants in the tenancy of the Property from the Applicant.

The following documents were lodged with the application:-

- A copy of the Scottish Private Residential Tenancy Agreement dated 1st June 2018 between the Applicant as Landlord and the Respondents who were the tenants,
- Statement of rent arrears showing a sum outstanding as at October 2019 of £1,388.00
- Photographs of the Property at the start of the tenancy
- 5 pages consisting of 30 Photographs of the condition of the Property at the end of the tenancy taken on 15th October 2019

1. The Application was accepted by a legal member of the Tribunal dated 21st February and a date was fixed for a Case Management Discussion to be held on 2nd April at 10am. The legal member who accepted the case also issued a direction dated 21st February 2020 asking for detailed specification of damage to the property, the age and value of the items for which a claim of damage was made and the legal basis upon which the Applicant claims the Respondents are liable to pay damages to the Applicant.
2. Due to the Covid 19 pandemic that case management discussion had to be postponed and was continued to 3rd July 2020.
3. By letter dated 15th March 2020 the Applicant's Representative Ms Drysdale of GM Thomson letting agents responded to the legal member's direction advising that;
 - The tenancy ended on 15th October 2019
 - That the sum claimed was £15,505 plus Vat totalling £18,606.
 - Providing some further details of the alleged damage to the Property but not giving any details of the age or value of the items allegedly damaged at the start of the tenancy.
4. A further Direction was sent asking for further clarification by the current legal member on 29th June 2020. In particular asking for clarification of the sum claimed as the amount of damages and the rent arrears did not add up to the sum claimed; clarifying if any repair work had in fact been carried out and asking for any updated invoices; as well as repeating the request for further details of the age and value of the damaged items as well as how the damage had been caused.
5. The Applicant's representative responded by letter dated 7th July 2020 and again confirmed that the amount sought was £18,606 relying on the original quote for works to be done to the Property from R Jardine amounting to £15,505 plus VAT. They further advised however that some work had been done and lodged an invoice for works done including clearing the Property of all floor coverings, doors, bathroom suite and kitchen damaged wall and ceilings, repairing doors and making safe electrics and fitting new locks. The total amount shown on this invoice by R Jardine is £6,504.
6. At the first CMD the Applicant did not attend but was represented by Ms Drysdale from G M Thomson & Co as the Applicant's representative the Respondents were also both present on the teleconference and Mr Rennie's mother was also present as a supporter.
7. The Convener explained that as the application was made up of a claim for rent arrears and a claim for reimbursement for damage to Property she intended to go through each element of the claim and ask both parties to advise of their position on each element.
8. Ms Drysdale confirmed that the rent arrears amounted to £1388 when the tenants left the property and no further sums had been paid. The Respondents agreed they owed rent but it was not clear if the deposit had been repaid to the Applicant so Ms Drysdale advised she would check this with her client.
9. The Legal member then started to go through each item of claim for damage listed on the quotation from R Jardine Joiners with both parties. Ms Drysdale explained that she did inspect the Property regularly and had last inspected it on

or around May 2019 but only saw the alleged damage on the day the tenants were leaving.

10. The note of this CMD is referred to for its full terms but in summary Ms Drysdale advised that the carpets were filthy and needed replaced, doors in the bedroom were kicked and damaged, there was a hole in the bath and a broken sink, and that there was damage to the kitchen doors and cupboards.
11. Respondents agreed that some carpets had been soiled, but advised the property was generally dirty when they moved in and that some of the doors were not fitted in the property initially because it was agreed that they (the tenants) would fit them. They denied damaging the doors or the bathroom. (Ms Drysdale agreed saying that new carpets had been laid, which meant the doors had been removed and the tenant agreed he would fit them).
12. With regard to the kitchen Ms Drysdale advised that after the tenants left she found a leak in a pipe in the cupboard under the sink but alleged that the tenant had not advised of this timeously and this caused water damage to the floor and downstairs flat. She also advised there were tears to the vinyl caused by the tenants. The Respondents denied there was any damage to the kitchen caused by themselves or that they knew of any leak and claimed that if they had realised it they would have reported it
13. At this point in the first CMD Ms Drysdale mentioned that the Applicant had in fact sold the Property so it became clear that the application which was based on replacing items the Applicant claimed the Tenants had damaged was no longer appropriate and Ms Drysdale advised that the invoice sent in by the Applicant from R Jardine Joiners reflected the work that has now been done to the Property and all that might be done before the sale was completed.
14. The Tribunal once again asked the Applicant to clarify what they were seeking and to specify the legal basis for the claim and how any loss relates to the Respondents liability in terms of the lease.
15. The case was continued to a second CMD for clarification of the Applicant's claim and unfortunately the Applicant was not in attendance and neither were the Respondents. Ms Drysdale attended and was able to confirm that the deposit of £280 was successfully reclaimed by the Applicant which meant she advised that the rent arrears were now £1108. She also confirmed that the new sum sought as per the invoice from J Jardine dated 12th June 2020 was £6,504 representing work completed in the property prior to the sale of it, plus the rent arrears of £1,108 amounting to a total of £7,612. The Applicant had also lodged a letter dated 30th July containing a partial breakdown of the different heads of claim making up the sum sought in the invoice of 12th June and confirming that he sold the Property on 26th June 2020 for £23,500 and claiming this was sold at a loss due to the state of the Property.
16. The Repair works are mainly made up of the removal of floor coverings; bathroom suite; kitchen; repairing walls and ceiling damage; repairing the kitchen floor and windows and main door as well as transport to the Property and site management and set up.
17. A revised rent statement has been lodged showing the sum due after deduction of the deposit which appears to have been successfully claimed by the landlord is now £1108.
18. As the Legal member advised she had wanted to go through each item of claim for damage listed on letter from Mr Brian Jardine dated 30th July 2020 to explore in more detail the nature of damage that he felt the tenants had caused to the

various items, why the full item had then had to be removed and the cost or value of said items, but he was not there to answer these questions it was agreed the matter would have to be referred to a full hearing to resolve the following issues:-

- a. the extent of whether the damage had been caused to the various items specified by the Applicant
 - b. if so whether it was caused by the Tenants
 - c. And even if the damage was caused by the tenant has this caused the Applicant the loss to the extent he is claiming
19. A hearing was fixed for 26th October 2020 and prior to that the Applicant lodged a partial copy of the missives and for the sale of the Property showing it was sold on 23rd June for £23500.

The Hearing

20. Both the Applicant Mr Jardine and the Applicant's representative Ms Drysdale were in attendance at the hearing as were the two Respondents, Mr Rennie and Ms Anderson. The Respondents were not represented. The Convener made introductions, explained how the hearing would be conducted over the teleconference and clarified that there were no other witnesses who would be attending.
21. The legal member started by inviting the parties to state their position regarding the rent arrears as this did not appear to be in dispute. Ms Drysdale confirmed that as per the revised rent statement the sum due after deduction of the deposit was £1108 and the Respondents accepted this amount is due and owing.
22. The legal member then invited the Applicant's agent to present their case with regard to the damage to the Property and she confirmed that the additional sum claimed was £6504 set out in the invoice from R Jardine of Whatchhill Carlisle Road Annan. Mr Jardine confirmed during the hearing he is a partner in that joiners' business, that he owns and lets out around 40 properties and sometimes does work via his firm and sometimes engages local contractors. Ms Drysdale indicated that the work claimed was set out in greater detail in a letter submitted by the Applicants dated 30th July 2020 and addressed to her. This letter shows that the Applicants are claiming for the following: _
- a. All floor coverings damaged so had to be lifted and disposed of - £620.
 - b. Internal Doors – removed damaged doors and repair door casings - £715
 - c. Bathroom Suite – removed damaged bathroom suite - £350
 - d. Kitchen – removed damaged kitchen - £410
 - e. Walls and ceilings – repaired damaged walls and ceilings -£700
 - f. Kitchen floor – repair floor -£420
 - g. Windows and Main door – repaired windows and main door, fit new locks to door -£705
 - h. Electrics made safe - £280
 - i. Kitchen first fix - £250
 - j. Transport -£520
 - k. Site management and set up - £450
- All figures exclude VAT.

23. Ms Drysdale submitted that all the work was required as a result of the condition the Respondents left the Property in when they left in October 2019. She confirmed it was filthy and that she had taken the exit photographs lodged with the application. Mr Jardine added that he had not intended to sell the Property initially that he had intended to do it up and re let it but that the owners of the downstairs property had made an offer which he felt he wanted to accept. He stated that he believed the Property had sold at a much lower value than it would have done if the tenants had not left it in such a bad condition. He claimed the difference in value was around £23500.
24. The Tribunal noted that the Applicant has not made any claim for damages as a result of perceived reduction in the value of the Property and therefore any statement regarding this was not relevant to the current dispute and the Tribunal could not consider such a claim. The Tribunal also noted there is no evidence of how much the Property was worth prior to the Respondents taking occupation or how much it would have been valued at afterwards.
25. The Tribunal then asked Mr Jardine some questions about the various items he was claiming were damaged and the loss he has incurred. This was followed by evidence from Ms Drysdale. The Applicant's position is as follows:-
26. Re the floor coverings. Mr Jardine's position is that all the floorcoverings in the Property were badly soiled or marked and could not be cleaned. They had to be disposed of and he advised he hired a skip to get rid of the various items at a cost he thought of around £400. Ms Drysdale supported the view the carpets and floorcoverings were filthy and both referred to the photographs lodged which are time dated 15th October and show dirt and marks on the carpets. The Respondents accepted that they had damaged the carpets. The Tribunal explored with Mr Jardine why the cost of removing floor coverings was £715 when for instance the cost claimed for removing the whole kitchen was just £410. Mr Jardine advised this would include the cost of the skip and travel time from Annan to Glenluce. The Tribunal explored why he did not as the owner of the Property use the free municipal recycling centre to dispose of damaged goods and so minimise his loss. Mr Jardine just stated that as a business they are always charged and they just hired a skip for this type of work.
27. The Applicant advised that 7 internal doors were damaged by the Respondents and had to be disposed of. He referred to the photographs taken by Ms Drysdale on 15th October and advised this shows the damage was caused by either kicking or punching. He also claimed the door casings were damaged. Both the Applicant and Ms Drysdale accepted that the bathroom door which shows damage to the top half of it was in that state when the tenants took possession. The page of Photographs headed up " Damages 3 North Street Glenluce – Bedroom" show 3 doors in a bedroom from which 2 appear to have holes in them on or towards the foot of the doors and one is sitting on the floor off the door frame. The other comment on this page of photographs is that the room is in poor decorated order and carpets are badly stained. The other photographs show the bathroom door with a hole in the internal door but this appears to match the hole which was there and evident from the check in photographs. The photographs of the other rooms do not show any defect in the doors and do not highlight this in the description.
28. Ms Drysdale when asked about the internal doors confirmed the ones she had shown had the holes that could be seen on the photograph. She stated that she had not seen nor noticed if the casings or hinges were damaged.

29. The Respondents agree they may have damaged 2 doors they deny any other doors were damaged by them including the main door.
30. Mr Jardine then spoke about the bathroom suite which he claimed needed removed as there was a hole in the bath and a large piece out of the sink. He advised he had never in fact met the Respondents and had let Ms Drysdale deal with the let as it was further away from his other properties. He also confirmed that he did not in fact visit or inspect the Property until about a month after the tenants left. Ms Drysdale spoke in more detail about the issues in the bathroom saying that on her inspection on 15th October she noticed what looked like a crack on the sink but on closer inspection she realised it was a piece which came out when she tried it and she then photographed the damage. This page of photographs marked "damages – Bathroom" states "hole in bath, crack in wash hand basin hole in internal door to bathroom, dirty." No comment was made about the toilet other than the whole property was dirty. The Applicant is seeking £350 to remove the suite.
31. With regard to the Kitchen units the Applicant advised he felt when he visited the Property that the kitchen was in a poor state with doors hanging off, broken cupboards and hinges damaged. He advised that he felt it needed a whole new kitchen and that he had started to prepare for that and had indeed submitted his first invoice on the basis that this would need done and he felt it was the Tenant's responsibility. Under questioning the Applicant confirmed that the kitchen would probably have been put in when he bought the Property which the tribunal could confirm from a Property search was 2008. The Applicant agreed it could be 12 years old. He also confirmed that he has let it out the whole time and it has probably been let to at least 4 tenants, including letting it out to Dumfries and Galloway Council for 5 years. Mr Jardine also spoke of the kitchen vinyl being torn and having a hole in it near the cooker. The Applicant is claiming £410 for removing the damaged kitchen and £420 to repair the floor. He is also seeking £250 for "Kitchen - first fix" which he explained was to fix timber battens at height of units so that units and worktops could be fixed to the timber.
32. Ms Drysdale in her evidence agreed that the kitchen units were filthy that there were orange marks on the work top and the floor had a hole in it and a few tears. The photographs of the kitchen from the checkout report record "torn vinyl, damage to walls and dirty. They show one set of two drawers where the front panel seems to be ajar slightly.
33. With regard to the kitchen floor, apart from commenting on the marks on the vinyl the Applicant is claiming for a repair to the floor itself. He advised that the downstairs neighbour has had a ceiling fall down and claims it is from a leak in the Property. This claim was made around 22nd October after the tenants had left the Property, but Mr Jardine thought the tenants may have left water running or taps running. On his inspection of the Property a month later he could not find any evidence of a leak in a pipe. He advised he had a plumber isolate the water but it was not until March 2020 when himself and his team noticed the damage to the floor and underneath which he reported *had rotted and needed replaced*. Ms Drysdale corrected the sequence of events, advising that the water had been switched off on 15 October 2019, when the property was vacated. Under questioning the Applicant confirmed that he thought there was a bowl placed under the sink but did not think that had caused the damage and confirmed that indeed "he did not know what had caused the damage". The Respondents denied

there were any leaks that they had noticed when they were there. The Applicant is seeking £420 for the repair to the kitchen floor.

34. Walls and ceilings. The Applicant confirmed that when he saw the Property the whole place needed painted and holes filled in as the walls and ceilings were badly marked, dirty and paper had been pulled off. He confirmed it had been newly painted before it was let to the Respondents. He commented on holes in the stairwell, a hole in the kitchen wall and confirmed every room needed sanded and a first coat of paint. He denied this was just wear and tear and said in all the years of letting out Property this was the worst.
35. Ms Drysdale corroborated that view confirming that when she saw the Property on 15th October the walls had marks all over them, there were indents and scuff marks and she thought the Respondents had started to put paper on which had been pulled off. She referred to some of the photographs including those of the kitchen wall and bedroom. She also spoke of the house being in immaculate condition when it was let out.
36. The Electrics. The Applicant is claiming for the cost of making electrics safe. He referred to a heater shown in the photograph of the bedroom where it is off the wall and lying on the floor and advised that the wire had been pulled out of the wall and was lying bare. He had asked an electrician to check the house, and advised as he does not employ an electrician this would be a separate contractor. He advised that the electrician had to make this wire safe as well as wires hanging out of the ceiling from a light fitting. He was of the view that both items were caused by the Tenant's negligence.
37. Ms Drysdale confirmed that she had taken a picture of the heater lying on the ground with an exposed wire but was more unclear about whether there was an exposed light fitting. The picture of the heater is shown on the page of check out photographs entitled Bedroom and at the top of the page the narration states "Left in poor decorated order, hole in bottom of bedroom door, wardrobe doors hanging off the hinges with holes in doors badly stained carpet with burn marks." Ms Drysdale confirmed there is no picture of a light fitting, damaged or otherwise in the Property check out pictures.
38. The Main Door and windows. The Applicant is claiming for the cost of repairing the windows and main door, fitting a new lock to the main door at a cost of £705. With regard to the keys the Applicant stated that only one set was returned but both the check in report and Ms Drysdale confirmed that the Respondents were only given one set and that they returned one set so the Applicant was asked why he felt that he required to change the locks and why the Respondent would be liable for that. The Applicant response was that it was unusual to find no mail behind the door a month later when he first visited the Property and so assumed that the Respondents had cut another set of keys which they hadn't returned. With regard to the main door he advised that when he visited, a month later, the door looked like someone had tried to force it open while it was locked and damaged the door casings. He confirmed however that the lock was still working. He could not say when this may have taken place. Finally the Applicant commented that several window handles were broken and the mechanism for the windows again forced. He feels the Respondents are responsible for all these items.
39. Ms Drysdale advised that she could not confirm seeing any damage to the front door when she entered the Property and inspected it on 15th October 2019.

40. The Applicant is seeking £520 in transport costs and £450 for a site management and set up fee. He explained that as well as the time taken to travel to the Property being included in the cost of the works done, he confirmed the sum shown as Transport cost was for the petrol spent. In response to questions he advised that his first visit to the Property was in a car and then there might have been 16/17 visits for 160 miles. On being asked if this what this equated to in terms of days or hours worked, he then clarified that that maybe 13/14 days full days work but that it was rough and "he didn't know exactly". Maybe 2 vehicles but he was not sure". Mr Jardine repeated that in his view this was originally a £20,000 job and he stopped only because he got the offer to buy the house but he was selling at a vastly reduced value. On being asked what a site management fee was and why it was required here, he said that this was something they added to every job, it was for things like a site hut, organising work and setting up the site; it was just paperwork, something we normally do.
41. Ms Drysdale in her evidence confirmed that the Property had been immaculate, newly decorated and with new carpets when handed over the Respondents. She confirmed that there was no hole in the bath at the start of the tenancy, that she agreed the walls and stairwell were badly marked and the carpets were soiled and filthy. She said there was damage to the lounge door, bedroom door and wardrobe door. She confirmed that she had not seen any damage to the door casings or front door, nor any damage to the windows. She recalled the wire exposed on the heater but when asked about the light fitting was hesitant saying I think I can recall light fitting dangling. She confirmed that she found the kitchen units filthy and orange marks on work tops and drawer damaged. She confirmed the vinyl had a tear in it and there was a small black mark on the floor. Ms Drysdale also confirmed she is not sure where the leak came from that damaged the ceiling in the Property downstairs.
42. Ms Drysdale advised that she had done one or two inspections during the tenancy and the previous one was on 2nd May 2019 when she only saw rubbish lying outside which had to be removed, she advised the carpets looked okay then and no sign of damage but the Respondents did have a large dog.
43. The Respondents were then asked to give their evidence and they confirmed that they both accepted they owed the rent arrears claimed and that they had left the carpets in a soiled state. They accepted that they may have damaged 2 of the doors but denied any further damage to the internal doors or the main door which they claimed was working when they left. They both confirmed they received and returned one set of keys, that they did not damage nor were the window handles broken when they left. Mr Rennie advised that the hole to lead a cable through the window was there before they moved in.
44. With regard to the bathroom suite Ms Anderson advised that she had not seen any crack in the sink and did not agree that Ms Drysdale mentioned this on her inspection. With regard to the hole in the bath she said they did not use the bath they just used the shower. Mr Rennie however agreed there was a small hole in the bath but he wasn't sure if it was there at the beginning of the lease or not.
45. With regard to the Kitchen the Respondents advised that they had cleaned it down and it was presentable, although the small piece of lino was ripped and the hole was always there. They said nothing was hanging off and no damage to the kitchen. Ms Anderson corrected this by saying that Mr Rennie had tried to put something up on the wall and this had left some damage. Ms Anderson advised that re the worktops any orange marks were rust from the cooker not actual

damage. They also both confirmed that there were no leaks in the Property when they left.

46. With regard to the marks on the walls referred to by the Applicant and Ms Drysdale, Mr Rennie confirmed there were marks from putting a telly on the wall in the lounge and some holes in the stairwell maybe from furniture marks. With regard to the picture of paper on the bedroom wall he advised they had tried to put paper up but that it came off because of dampness on the wall. He also advised that they had tried to phone the letting agent about the dampness but they had not answered the phone and so he could not get through. The Respondents advised that they believe dampness made the heater fall off the wall in the bedroom leading to the wire being exposed.
47. Ms Anderson was asked if she was upset as Ms Drysdale suggested she was during the inspection. Ms Anderson said she was but not because of the state of the Property but because she had nowhere to go.
48. The Tribunal also noted the check in report records that the Property needed a deep clean and that the Respondents agreed to do this.

Findings in Fact

49. The Applicant and the Respondent entered into a private rented tenancy agreement dated 1st June 2018 whereby the Applicant let the Property to the Respondent from 1st June 2018 to 15th October 2019.
50. The monthly rental was £280 payable on 1st of every month commencing on 1st June 2018
51. The Respondent paid a deposit of £280.
52. As at the end of the tenancy there were £1388 of rent arrears due by the Respondents.
53. The Deposit was placed in a tenancy deposit scheme and returned to the Landlord in December 2019 and has been credited towards the rent arrears leaving a balance due of £1108.
54. The letting agent conducted an inspection of the Property on 15th October 2019 and took some photographs of the condition of the rooms and fixtures.
55. The letting agent did not ask the Respondents to sign or agree the check out report
56. The letting agent did not follow up the check out report with a letter claiming any damages from the Respondents.
57. The Applicant first visited the Property a month after the tenancy ended
58. The carpets were new when the tenancy began and were soiled and dirty and not able to be cleaned at the end of the tenancy. The carpets and floorcoverings have been removed from the Property and disposed of.
59. 2 internal doors have been damaged by the Tenants and have been disposed of by the Applicant.
60. The Property was not clean when the Tenants took entry and was not clean when they left.
61. The sink had a large piece missing at the end of the tenancy and the bath had a hole in it, neither was there when the tenancy started. The whole bathroom suite was removed by the Applicant in March 2020.
62. The kitchen was at least 12 years old and any issues were the result of wear and tear. The Applicant has removed the whole of the kitchen units and repaired the floor.

63. Water has damaged the kitchen floor and the downstairs neighbour's ceiling but the cause is unknown.
64. The main door may have been damaged after the tenants left the Property but it was not caused by them.
65. There is no evidence of broken handles or window frames
66. The full set of keys given to the tenants were returned by them.
67. An electrician attended the Property to check on the condition and make sure it was safe. During this visit he has made safe one bare wire on a heater that has been pulled out of the wall during the tenancy.
68. The Walls of the rooms had some holes put in by the Respondents and various marks on them, the holes have been filled in and the whole Property has been painted internally.
69. The Applicant has used his own joinery firm which is based 160 miles away to do the work and only started it in March 2020.
70. The Respondent is not liable for the set up costs for major work that was not carried out.

Reasons for Decision

71. The Applicant is claiming damages for loss sustained due to he alleges the Applicants negligence or neglect in looking after the Property. The Applicant has a duty to minimise his losses when seeking recompense for any damages or compensation for loss incurred. The Tribunal considered each head of loss claimed:-
 - a. **Floor coverings** – the Respondents accepted they were responsible for the condition of the floor coverings. The Applicant is seeking payment for disposing of the floor coverings not replacing them because he has sold the Property. He has not lodged any invoice for the cost of a skip that he says he hired nor has he demonstrated why he could not, as owner of the Property, take dirty carpets to the local recycling centre for free.
 - b. **Internal Doors** – the Applicant is claiming for the removal of 7 doors he claims the Respondents damaged during their tenancy. There is only photographic evidence of two doors being damaged which the Respondents accepted. The bathroom door was already damaged as can be seen in the check in report. There is a door in the check out photographs which looks like it is not on it's hinges but as the Applicant was throwing the doors away that would not be a disadvantage or extra cost indeed it would save time in removing it. So the Tribunal accepts the Respondent is liable for the cost of disposing of 2 doors. Re the claim for labour in fixing the door casings there was no evidence presented in the photographs or confirmed by Ms Drysdale that they appeared damaged on the inspection when the Respondents left. The Applicant advised he found them to be damaged the Respondents deny there was any fault with them. As there is no independent evidence from Ms Drysdale or the photographs taken when the Respondents left the Property that show any damage to the door casings and as it was not raised when they checked out the Tribunal

does not accept on the balance of probabilities that this has occurred as a result of the fault or negligence of the Respondents .

- c. **Bathroom Suite.** The Applicant and Ms Drysdale both confirmed that there was a hole in the bath and a large crack resulting in a substantial piece of the sink missing. This is corroborated by the photographs particularly of the sink on 15th October 2019. The Respondents deny there was any damage to the sink but the Mr Rennie accepted there may have been a hole in the bath, but was not sure when it was first there and Ms Anderson advised they just had showers so did not fill the bath. The Tribunal accepts that damage has been caused to the sink the photographs of the sink at check in look like it is in one piece. It is clearly missing a piece when the Respondents were leaving the property and this is corroborated by Ms Drysdale who seemed clear and credible in giving her evidence throughout. With regard to the hole in the bath 3 of the parties agree it was there when the Respondents left, it is not entirely clear how the bath was from the check in the photographs as there is a bucket and bag lying in the bath in those photographs however Ms Drysdale and Mr Jardine were clear and emphatic that the hole was not there so the Tribunal prefers and accepts this evidence that the bath was damaged during the tenancy. The bathroom suite is not new from the photographs it can be seen as having different coloured parts but the claim is for removal of the damaged parts.
- d. **The Kitchen.** The photographs of the kitchen from the check out report record "torn vinyl, damage to walls and dirty. They show one set of two drawers where the front panel seems to be slightly ajar.
- e. The Kitchen is at least 12 years old according to the Applicant. He has rented out the house for the last 12 years and it would be expected that there will be a fair amount of wear and tear on a kitchen in that time. There were no photographs of major damage to the units, with only one set of drawers slightly open and there was no attempt to confirm if these could easily be fixed back on. With regard to the kitchen floor again there was no evidence that it was newer than the kitchen. The hole referred to was claimed by the Respondents to be present when they entered the Property and the tribunal noted the area where the torn part of the vinyl is was occupied by a washing machine from the photographs taken at the check in. The Tribunal was satisfied that any damage to the kitchen units and floor was simple wear and tear in an old kitchen occupied by numerous tenants. The Tribunal does not accept that the cost of removing the kitchen units or preparing for its replacement, or repairing the floor has been necessitated by any fault or negligence of the Respondents.
- f. **Walls and Ceiling;** the Applicant has claimed for painting and fixing the walls and ceiling in the whole Property. There is no detailed breakdown of how the sum of £700 is reached in calculating this. The evidence from Mr Jardine and Mr Drysdale supported each other as both confirmed the Property had been newly decorated before the tenants took entry and it was dirty, marked and holes had appeared in the walls during the tenants' time there. No one led any evidence to

suggest there were marks or stains on the ceiling but the Applicant did confirm the marks were on a lot of walls and mentioned in particular marks in the stairwell, hole in the kitchen wall and marks in the lounge and bedroom. The Respondents agree they caused a hole in the kitchen wall and maybe some in the stairwell as well as marks from hanging a television. They deny holes near the window and argue that dampness caused some other marks. The Tribunal preferred the evidence of the Applicant and Ms Drysdale in this claim as they both corroborate each other, marks and holes can be seen in the check out photographs and there is no evidence of dampness in the house or that the Respondents tried to contact the agent about this more than perhaps on one occasion, which does not indicate this was a serious issue. The Applicant however has carried out this work as part of his overall intention to refurbish the Property. He has not provided a time and line breakdown of how long the painter took or for the materials. He has admitted that costs were raised due to extra travel time taking all that into account the Tribunal feels that a reasonable cost of filling in some holes and giving the walls (not the ceiling as there is no evidence of damage to the ceiling) one coat of paint would be £350

- g. **Windows and main door.** There are no pictures to substantiate the claim by Mr Jardine that the main door was broken when the Respondents left the Property. Ms Drysdale does not remember any issue with the door, the Respondents deny there was any issue and they also deny any issue with the window handles. There are no photographs of the main door being damaged or the broken window handles. Mr Jardine himself confirmed he did not see this until at least a month later. He submitted the damage was possibly from someone pushing at a locked door and that this was an internal main door accessed once someone comes in the external front door in the block of flats. There was no evidence to show that even if the door was damaged it was damaged by the Respondents and so the Tribunal rejects this part of the Applicant's claim.
- h. The Applicant is also claiming for the cost of cutting further keys however both the Respondents and Ms Drysdale confirmed the Respondents only received one copy and they returned one set. If the Applicant as owner feels it is prudent to change locks when a tenant leaves and in case they have other copies cut then that is his prerogative but it is not the responsibility of the tenant. This part of the claim is rejected.
- i. **Electrics.** With regard to the Electrics the Applicant is claiming £280 plus VAT as the cost of sending an electrician to make safe some items in the Property. There is no evidence of a light fitting being broken or unsafe and if it was there it would be expected that the Agent would have photographed it and put it to the Respondents for their comments. This leaves the claim of requiring to make safe the wire exposed from the heater. The Respondents suggested that the heater had fallen off the wall because of damp issues however although they said they tried to contact the Agent to complain of this the Agent has no

record of them phoning her office or of any messages left. Mr Jardine advised it would be very surprising if a heater had fallen off a wall it was screwed and wired into because of dampness and suggested it looked like it had been pulled off. The Tribunal preferred the evidence of the applicant and the agent on this matter. It found it more likely that the Applicant's version was credible and the fact a wire was left exposed is recorded in the check out photographs. However the Tribunal also accepted the full cost of a making good that wire would not take a qualified electrician very long. The Applicant confirmed he had sent the electrician to check the Property and make it safe. The tenant cannot be charged for an electrician's time in checking the Property only for repairing any damage. In this case there is no detail of how much the electrician actually cost and no time given for the time it took him. The sum of £50 would appear reasonable for this to be fixed as part of his time at the Property.

- j. **Transport.** The Applicant is claiming £520 for petrol money to drive to the Property from his place of business. The Applicant confirmed that sometimes he has used other local contractors to do jobs for him. The Applicant confirmed that he did not start the work on the Property until March 2020 by which time the country was going into lockdown and hiring other contractors would be difficult. The Applicant does not appear to have minimised his loss by seeking to repair any defects immediately or use other contractors that would not incur extra transport or time costs.
- k. The Tribunal has accepted that the Respondents are liable for the removal of carpets. Part of the bathroom suite and some internal doors. If this had been done earlier by a local contractor the cost would not involve travel from Annan. The Tribunal finds that the claim for petrol costs incurred in March 2020 by the Applicant using a firm in which he is a partner is not directly attributable loss caused by the fault or negligence of the Respondents and therefore not a loss that can be recovered.
- l. **Set up costs.** The Applicant is seeking to recover £450 for this but when asked to explain what this covered he could only suggest this is sum always added to a job and what is normal. He had advised that originally the job would have been worth about £20,000, and his original quote for work that he considered required to be done was. The Applicant seems to have intended to completely renovate the Property. The Applicant did originally wish to claim the cost of this from the Respondent however this has since been amended as the Applicant did not carry out all this work preferring to sell it instead. The Applicant is only entitled to reasonable expenses properly incurred due to any fault or negligence of the tenants. The cost of set up would appear to relate to setting up a full building site not removing carpets and floor coverings, 2 internal doors and painting the property. The

Tribunal does not find the claim for set up to be reasonable or one that is a proper loss of the Applicant.

- m. The Tribunal found that the Respondents were responsible for the cost of the removal and disposal of floorcoverings, 2 internal doors, part of the bathroom, the marks and scuffs on the walls and some holes and making safe the wire on the heater. The Tribunal finds the individual costs claimed of disposing of floor coverings, 2 doors and the part of the bathroom damaged by the Respondents to be excessive. The Tribunal notes that the Applicant's earlier quote dated 2nd December 2019 from R Jardine contains a quote of £500 plus VAT for removing **all damaged items**. As this would include all doors, the full bathroom suite and kitchen which the Applicant goes on in that quote to suggest needs replaced the Tribunal has accepted that a reasonable figure for removal of the damaged items attributable to the Respondents only, would be half of that figure namely £250 plus VAT. In addition the Tribunal concludes that a reasonable figure for the repair of walls and the electrical wire as stated above would be £400 plus VAT. The Tribunal therefore agrees a fair and reasonable figure for the work done by the Applicant for the damage caused by the Respondents is £650 plus VAT which gives a total of £780. Combined with the rent arrears of £1108 this gives a total due of £1,888.

Decision

72. The Tribunal awarded the sum of £1,888 to the Applicant in respect of rent arrears and compensation for the removal of damage items from the Property and repairing holes in walls and applying one coat of paint.

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.

Jan Todd

Legal Member/Chair

05 November 2020
Date

