



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

**Chamber Ref: FTS/HPC/CV/19/0428**

**Re: Property at 2 Middlesex Gardens, Flat 2/3, Glasgow, G41 1EL (“the  
Property”)**

**Parties:**

**Mr Zubair Arshad, 139 Harvie Avenue, Newton Mearns, Glasgow, G77 6LJ (“the  
Applicant”)**

**Mr Qazi Muhammad Faheem, 12 Midlock Street, Flat 1/1, Glasgow, G51 1SL  
 (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

1. An application was received under rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) for an order for payment in relation to unpaid rent and costs for damages to the Property.
2. The application included the following documents :-
  - tenancy agreement
  - email communications between letting agent and tenant
  - photographic evidence showing damages to the Property
  - invoice and statement from plumber regarding the repairs
  - statement from pest control officer

3. A case management discussion took place on 17 January 2019. Reference is made to the terms of the case management discussion note and the Notice of Direction issued.
4. Both the Applicant and Respondent lodged documentation in terms the Notice of Direction. On 29 May 2019 the Applicant lodged a further documentation in response to the Respondent's submission.
5. Both parties were in attendance at the hearing. The Applicant was represented by Ms Zubair. The Respondent was represented by Mrs Maxwell-Ferguson from the Govan Law Centre.

### Hearing

6. The following preliminary matters were dealt with:-
7. The Respondent's solicitor confirmed that she had not had sight of the further response documentation from the Applicant. It was confirmed by the clerk that it had been emailed to her on 29 May 2019. There was an adjournment in order that she and the Respondent could consider the further response documentation. The Respondent objected to the late submission of this documentation as it had been submitted outwith the time limit for lodging documentation. The Applicant asked that it be allowed to be received, as it was a written response dealing with the Respondent's written response, the Applicant had not previously been aware of the Respondent's position. The Tribunal agreed to accept the further response documentation from the Applicant, given at that it would be open to the Applicant to make a verbal submission on the these matters; and the majority of the further response documentation took the form of photographs or short emails and we did not consider that it would be unfair to the Respondent to accept this information.
8. Parties agreed that the tenancy commenced on 23 August 2017; that the tenancy ended on 15 October 2018; and that the persons residing in the Property were the Respondent, his wife and his two children.
9. The Respondent was requested to clarify which damages he accepted responsibility for; they confirmed that the damages that they accepted were, the lino (subject to a quote being provided for the new lino); and the damages to the walls as shown on pictures 1 and 2 on pages 20 and 21 of the Applicant's First Set of Documents the costs of this damage had not however been quantified by the Respondent. The Respondent, towards the conclusion of the hearing, also accepted that rent arrears claimed totalling £195 were due by him and some damage to a window.
10. The question of title to bring these proceedings was then considered. The Respondent's agent submitted that the Applicant did not have title to bring these proceedings as the tenancy agreement is in the name of AQA Property Ltd. She submitted that nowhere in the tenancy agreement did it state that AQA Property Ltd were acting on behalf of the Applicant, they had held themselves out as the landlord. She referred to the lease agreement (Respondent's Document 10 in

support of her position. She distinguished other related documentation for example the AT5 was not the tenancy agreement. She submitted that there was no evidence of any contract between the Applicant and the Respondent. She submitted any communication between the Applicant and the Respondent had only taken place because the letting agent had told the Respondent that he had to deal with the Applicant. The Tribunal asked the Respondent's agent if she aware that the Applicant was the heritable proprietor for the subjects. She advised that she had not been aware of this fact, but in any event AQA Property Ltd were holding themselves out as the landlords in this case.

11. The Applicant's Agent submitted that the Applicant was the landlord. She submitted that the AT5 showed that AQA Property Ltd were the letting agents for the landlord. She also referred to page 2 of the Applicant's Further Response Documentation the AT5 Notice; and page 3 showing emails from the letting agent confirming that they were not the landlord. She referred to the Applicant's email dated 21 November 2018 sent to the Applicant from the Respondent. She submitted that it was clear that the agent and the landlord were separate parties, and the Respondent was aware of this, and there had been communication between the Applicant and the Respondent in Whatsapp Messages.
12. In proceeding to deal with the claim, the hearing considered the damages as set out in the Applicant's First Set of Documents entitled "*Amounts Claimed*" at page 1.
13. Bathroom (sum claimed £1522.95)
14. The Applicant's agent submitted that the damage had occurred to the bathroom floor as a result of the negligence of the Respondent. She advised that there had been two leaks in around January 2018 which had been attended to by the Applicant. That leak had been resolved in January 2018 and there had been no further complaints of any leak. Damage to the floor had been noted during a visit to the Property on 15 September when the Applicant had gone there. The extent of the damage had only been discovered after they had instructed a plumber to attend. She referred to Mr Houston's Invoice. Page 12 Applicant's First Set of Documents set out the damage incurred to the floor. Page 13 is the invoice prepared by the plumber who did the works and repairs. Page 11 set out the assessment by the plumber, Mr Houston, that it had been caused by the sink tap left running causing flooding and damage. She advised that the floor in the bathroom had been sinking around the sink area and this was why the lino had torn. She submitted that the leak at the bath which had occurred in January 2018 was a separate matter to this damage, as the damage claim related to the flooding caused at the sink area. She referred to page 42 in the Applicant's First Set of Documents, email from the Respondent.
15. The plumber had advised to repair the damage they had to preplace the whole floor, and remove the fittings, the bath and tiles were damaged when removed and that is why they are being claimed for. They considered that the claim was reasonable but would be prepared to remove some elements if it were to be decided that the claim was unreasonable.

16. The Respondent's agent submitted that regard had to page 11 of the Applicant's First Set of Documents and the terms of the request made by the Applicant to the plumber as it requested an *"assessment report of the bathroom containing the following : your initial inspection how floor was water damaged by the tenant"*. She referred to the previous problems with the bathroom and referred to page 42 of the Applicant's First Set of Documents. There was no evidence of any inspection after the January 20218 repairs had been completed, to see if the leak had been fixed. In addition she disputed why if the damages were only to the floor, the Respondent was being charged for the bath, and new wall boards; she also noted that the invoice did not include VAT and it was not clear if it had been paid. She submitted that there was no evidence that any work had been done to the bathroom. At best the Applicant was only entitled to repairs to the floor which was wet, not the entire bathroom. She submitted that her client did not accept that he had caused any of the damage.
17. The Applicant referred to photos in her Further Response Documentation at page 12 which showed the bathroom before the Respondent had moved in. It was noted that these photos were not dated and it was unclear when they had been taken. The Applicant submitted that there was no need to remove the bath panel at the time of the January 2018 leaks as the Applicant did not consider that the damage to the bathroom extended under the bath area.
18. The Respondent submitted that the contractor who had been out to the Property to repair the leak in January 2018 had advised that all of the bathroom needed to be repaired, however the landlord would not pay for it. They submitted that there were a bundle of issues affecting the Property. They submitted that the repair had been inadequate. They submitted that the damage was pre-existing and had existed for a significant period of time.
19. The Applicant disputed this and said that the damage had only been raised at visit by the Applicant to the Property on 15 September 2018 and then a subsequent visit by the letting agent on 22 September 2018. It was after that date that the Respondent handed in his notice for the Property. She advised that the bath and walls were being claimed for as they had to be removed to do the repairs and this could not be done without damaging them.
20. The Applicant confirmed that the Property had been purchased in around 2014, they had rented the Property out since purchasing it. The bathroom was original when they had purchased the property.
21. Wall and Doors (sum claimed £350)
22. The Applicant referred to pages 20-25 of the Applicant's First Set of Documents. These photos showed the damage to the walls and doors. She also referred to page 28 which showed the Whatsapp message giving an estimate of the costs of painting the doors and walls. She submitted that 8 doors were sanded and repainted. Walls repaired and painted. The Applicant had carried out these works

himself. The Applicant advised that the Property would not necessarily be freshly decorated when new tenants took a property, it would depend on the condition of the property. They submitted the Property would have been decorated in around March/April 2016.

23. The Respondent submitted that there were only 7 doors and not 8. They submitted that there were no invoices submitted to cover the costs being claimed. She was not clear if the work had been carried out to the walls and doors. She did not consider that there had been information submitted which would support that claim. She also considered that the damages to the doors showed nothing more than what would have been fair wear and tear. She submitted that the damage shown on pages 22 and 25 were pre-existing damages. She also submitted that there was no evidence of the condition of the Property at the commencement of the tenancy and therefore it was not clear what the condition was at that point.

24. Kitchen (sum claimed £130)

25. The claim was in relation to the costs of cleaning the kitchen and the cost of repairing a hinge in a cupboard door. The Applicant's Agent referred to pages 31 to 37 of the Applicant's First Set of Documents and the accompanying photos to support this claim. She referred to the emails which had been submitted in relation to the cleanliness issues which had been raised with the Respondent. The Applicant submitted that the Respondent had been advised to keep the Property clean while he resided in the Property.

26. The Respondent submitted that there were no photos of the condition of the Property at the time of the Respondent moving in. She submitted that there was also no evidence of how the cleaning costs had been quantified. There were no invoices to support the full claim. The Respondent submitted that the hinge door was wear and tear there was no invoice for the labour. The Respondent indicated that there had been issues with the boiler and the cooker not working properly. He also submitted that there had been an issue with carbon monoxide within the property.

27. The Applicant disputed that there had been any concerns about carbon monoxide within the property. She advised that the annual gas safety inspection had flagged up an issue with the cooker, one burner did not work properly, and they had had that replaced the day on which it had been brought to their attention. She also advised that they had not been notified about any issues with the boiler.

28. The Respondent submitted that he had raised concerns about the boiler, there had been visits by the landlord regarding the boiler, he claimed that there had also been issues with the cooker working, and also cockroaches within the property. The Respondent advised that these matters were being raised to provide background to the claim made against the Respondent.

29. The Applicant submitted that the photos in pages 31-35 of the Applicant's First Set of Documents were taken when the Respondent had vacated the property.

this was not accepted by the Respondent. The Applicant submitted that there was no detailed invoice regarding the cleaning as he had carried out the cleaning works himself. The Applicant submitted that the cleaning and work to the bathroom had to be completed as soon as possible once the Property was vacated in order to allow the pest control work to be done with the cockroaches, and therefore that was why he had carried out the cleaning himself.

30. The Applicant confirmed that there was no check-in inventory. The Applicant confirmed that the Respondent had been advised to clean the Property and referred to a meeting on 22 September 2018 when he was told to do so. The Applicant stated that the Respondent had not attended the exit inspection however the Respondent advised that he had been given the wrong time.

31. Windows (sum claimed £50)

32. Reference was made to pages 38-40 of the Applicant's First Set of Documents and it was submitted that the photos showed the damage to the windows, that there had been two handles removed which needed to be replaced, the Applicant had carried out the labour himself.

33. The Respondent suggested that the damage to the photo on page 38 was already there when the Respondent had taken the property. The Respondent accepted that the damage to the photo on page 39 had been sustained by his children and he therefore accepted responsibility for that.

34. The Respondent called witness Ushan Ali, who was the brother in law of the Respondent, he advised that he attended the Property regularly. He spoke to various problems with the Property including the boiler, cooker, and flooding in the Property. He spoke about a number of attempts to get problems sorted out with the landlord. He appeared to the Tribunal to be credible in his evidence.

35. Both parties then summed up their cases, with the Applicant making particular reference to the Further Response Documentation that had been allowed to be received.

### Findings in Fact

36. That a lease agreement was entered between the parties.

37. That the tenancy commenced on 23 August 2017 and the tenancy ended on 15 October 2018.

38. That the lease agreement contains the following clauses relevant to the application:- Clause 4 you will be liable for any damages or breakage other than wear and tear; that tenants' responsibilities included to keep the house clean and tidy and in good condition generally to look after your accommodation; to vacate your accommodation at the end of the lease, leaving it in the condition which the lease requires you to keep it in.

39. That the Respondent resided in the Property with his wife and two children.
40. That there were rent arrears outstanding at the end of the tenancy totalling £195.00.
41. That there had been at least 2 water leaks in the bathroom in January 2018.
42. That there had been repairs requiring to be carried out to two walls.
43. That there had been a tear in the lino caused by the Respondents
44. That there had been damage sustained to one window frame.

#### Reasons for Decision

45. The decision of the Tribunal is to grant an order for payment in favour of the Applicant for the sum of £183.44 for damages to the Property and £195 for outstanding rent.
46. The sum for damages is calculated on the following basis:-
47. Bathroom £88.44 awarded. We have awarded the costs for the replacement for the lino. From the evidence before the Tribunal we were not satisfied that the damage to the bathroom had been caused by the Respondent. It was accepted that there had been pre-existing leaks in the property. It was not clear how long these leaks had occurred for and the extent of the damage which had been caused by those leaks. We did not consider the Applicant's position reasonable or that the Applicant had shown on balance that the damage in the bathroom had been caused by the Respondent and not by previous leaks. We considered it unlikely that the damage would have been caused by an overflowing sink as it would have been apparent to the tenants that water was running and flooding the bathroom, and it was unclear what the timescale of such flooding to have caused such damage would have had to have been. Even if the Respondent had been found liable for some costs we did not consider it reasonable to seek the full costs claimed to replace the bath, the full floor and walls. We note that the Applicant submitted that the Respondent had only damaged the area around the sink and submitted that this water damage was wholly separate from the previous leaks, however there was no evidence to substantiate their position. The Respondent denied that he had caused this damage. We found it unlikely that the Respondent or his family would have continually flooded the sink such that they would have caused damage to the bathroom which would have necessitated the repairs claimed.
48. We have awarded £50 costs against the Respondent in relation to the repairs to the walls. We have not made any award in relation to the doors. We noted in the evidence that the Property was purchased in 2014 to be rented out. It was not

decorated prior to the Respondent and his family taking the property. The Applicant indicated it may have been redecorated in March 2016, and there had been tenants in the Property after March 2016. The Applicant stated that he had carried out the repainting and repair works himself. There was no evidence of the repairs having been carried out, or of the condition of the Property when the Respondent moved in. The letting agent's email of 13 May 2019 did not make reference to any issues with the doors. Given that there are two adults and two children in the rented property, and as the paintwork was not freshly done, we do not consider that it would have been pristine and any award would also have needed to consider wear and tear, given these facts, we do not consider that there should be any award for painting the doors. We are prepared to award for the damage to the walls as admitted by the Respondent. In relation to the other damage claimed for the walls we preferred the evidence of the Respondent that that damage was already there at the date of entry.

49. We are prepared to award £30 towards the cost of cleaning the kitchen. Again there was no evidence of the condition of the kitchen at the commencement of the tenancy. We could not therefore be satisfied of the condition of the tops of the units, extractor or fan before Respondent took entry. While we note that there was evidence regarding the existence of cockroaches in the property, the condition of the Property at the commencement of the tenancy was disputed by the parties. We note that the letting agent in his email 13 May 2019 refers to the kitchen needing a clean. We did not consider however that the tenancy agreement was sufficiently detailed in its terms to contractually oblige the tenant to carry out the cleaning of the items complained about. There was also nothing to quantify the basis on which the cleaning costs had been charged. We did consider that the cupboard door hinge could have been fair wear and tear, given this is a rented property, and hinges do get worn and loose. Given the letting agents email regarding the kitchen needing a clean however we are prepared to award £30 to cover that cost.
50. We would award £15 for the damage to the windows, given that the Respondent admitted to some damage caused by the Respondent's children, we would therefore award costs for that repair. We preferred the evidence of the Respondent on this issue that the handles were not in place when he took entry to the property and accordingly, we are not prepared to award costs for the replacement handles.
51. Finally, in terms of the issue of title to bring the proceedings, the tenancy agreement is not clear in its terms that the landlord was the Applicant and not the letting agents. However, it appeared clear that the Respondent, the Respondent's witness and the letting agent all regarded the Applicant as the landlord. Further the Applicant is the heritable proprietor of the subjects and therefore, we have determined that he does have title and interest to bring these proceedings.



Decision

The tribunal grants an order in favour of the Applicant for THREE HUNDRED AND SEVENTY EIGHT POUNDS FORTY FOUR PENCE (£378.44) STERLING against the Respondent.

**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.**

Melanie Barbour

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**Legal Member/Chair**

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**Date**