



**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/19/1115

**Re: Property at Flat 9 Hamilton Tower, Regents Gate, Bothwell, Glasgow, G71
8QU (“the Property”)**

Parties:

**Mrs Beverley Gardiner, Turcan Connell, 180 St Vicent Street, Glasgow, G2 5SG
 (“the Applicant”)**

**Mr Jude Torley, formerly residing at Flat 9 Hamilton Tower, Regents Gate,
Bothwell, Glasgow, G71 8QU, and now residing at 8A Newtown Road,
Cloughage, Newry BT35 8NN (“the Respondent”)**

Tribunal Members:

Neil Kinnear (Legal Member) and James Battye (Ordinary Member)

Decision

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

Background

[1] This is an application for a payment order dated 9th April 2019 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[2] The Applicant seeks payment of rent arrears, compensation and other losses arising from the tenancy agreement between the parties in relation to the Property from the Respondent.

[3] The Applicant provided with her application copies of the short assured tenancy agreement, rent arrears statement, and various correspondence, photographs and other documents.

[4] The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

[5] The original application sought payment of rent arrears of £3,250.00, and the Tribunal granted an order for payment of this amount against the Respondent in absence on 17th June 2019. The Tribunal issued a Decision with Statement of Reasons on the same date.

[6] Subsequently, the Respondent applied for recall of that decision and order, which application was granted on 26th July 2019.

[7] Thereafter, the Applicant intimated an amendment to the sum sought by adding a claim for compensation and losses of £1,636.55, which amendment was allowed by the Tribunal.

[8] After recall of the original decision, a Case Management Discussion was set for 14th October 2019, which was postponed at the request of the Respondent due to his non-availability that day due to work commitments. The Tribunal then set a Case Management Discussion for 19th November 2019.

[9] In the interim period, the Applicant helpfully submitted further productions, which included a short summary with calculations of her revised claim which totalled £3,853.08. That figure was explained and broken down into its different elements.

[10] A Case Management Discussion was held on 19th November 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, accompanied by her husband, John Gardiner, and was not represented. The Respondent appeared, and was not represented.

[11] The Tribunal had a discussion with the parties, in which each helpfully set out their respective positions on the Applicant's claim. The Applicant indicated that she was seeking the full amount she claimed of £3,853.08.

[12] The Respondent went through each element of the Applicant's claim with the Tribunal, and clearly and concisely indicated which parts he accepted were due by him, and which parts he did not.

[13] He confirmed that he accepted the rent arrears calculation of £2,230.00, and the charge of £292.00 for cleaning and tidying the Property after his departure from it.

[14] The Applicant seeks £150.00 in respect of a charge made by Shelter for uplifting and disposing of various items of furniture which the Respondent had left behind in the Property. The Respondent confirmed that he accepted this element in principle, and would concede it if the Applicant produced a receipt or written acknowledgement from Shelter that this sum had been paid to it by the Applicant.

[15] The Applicant seeks £203.00 in respect of remedial work of certain minor repairs and replacement of light bulbs and the like. The Respondent confirmed that he accepted £34.00 of this sum, comprised of £8.00 for replacement of two light bulbs in the rear bedroom, £10.00 for replacement of the strip light in the kitchen, £3.00 for replacement of a light bulb to the light in pelmet over the kitchen sink, £3.00 for replacement of a light bulb over the bath, and £10.00 for sanding down and repainting the front bedroom window ledge. He disputes the remaining £169.00 sought of this element of the claim.

[16] Finally, the Applicant seeks £978.08 compensation. She explained that the Property is let unfurnished. She was unable to re-let the Property after the Respondent's departure for a period of 35 days, whilst the furniture which the Respondent left was uplifted and disposed of, and the Property was cleaned and remedial work carried out. The sum sought represented the rental which she would have received if the Property had been let out for this period.

[17] The Respondent accepted that, in principle, the Applicant was entitled to claim for loss of rental after he left whilst she carried out the works described, but argued that the sum sought for the period of 35 days was excessive, and that he would accept the figure of £270.00 as a reasonable one in that regard.

[18] To summarise, the Respondent accepted a total figure of £2,830.00 was due to the Applicant by him, and also accepted a further £150.00 if the Applicant produced confirmation from Shelter of that figure. He disputed the remaining sum of £873.08 which the Applicant seeks.

[19] There was clearly a sharp factual disagreement on the disputed elements of the claim as narrated above, and accordingly the Tribunal required to set a Hearing to take evidence on these points in order to make a determination.

[20] The Respondent had a memory stick which he stated contained images of the Property taken in the condition which he had left the Property in, which he indicated he intended to lodge with the Tribunal after the Case Management Discussion.

[21] The Tribunal reminded the Parties that any further productions which they intended to use at the Hearing should be lodged no later than 7 days in advance of the Hearing date, and that they should also lodge a list of witnesses no later than 7 days in advance of the Hearing date.

Hearing

[22] A Hearing was held on 22nd January 2020 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant again appeared, accompanied by her husband, John Gardiner, and was not represented. The Respondent again appeared, and was not represented.

[23] The Tribunal confirmed with the parties that their respective positions remained the same, as discussed previously at the Case Management Discussion, and then

proceeded to hear evidence from Mr Gardiner, the Applicant, Mrs Gardiner, and finally from the Respondent, Mr Torley.

[24] During the course of the evidence, Mr Torley confirmed that he now accepted, after seeing a receipt from Shelter for £150.00, the Applicant's claim for that amount in respect of Shelter uplifting and disposing of various items of furniture which the Respondent had left behind in the Property.

[25] The Respondent also accepted in the course of the evidence, after viewing photographs and hearing the Applicant's explanation, the Applicant's claim for £5.00 in respect of replacement of a shower caddy, £5.00 in respect of replacement of a toilet brush and holder, and £5.00 in respect of removal and/or refill of 8 picture tacks.

[26] That left in dispute £154.00 in respect of damages sought by the Applicant, comprising £119.00 for replacing the silicone sealant around the shower base which had become mouldy, £25.00 for the cost of replacement of the chrome drain cover in the shower, which had become discoloured and tarnished, and £10.00 in respect of the cost of replacement of a strip light in the bathroom illuminated cabinet.

[27] The claim for loss of rental also remained in dispute as earlier noted.

[28] It became obvious to the Tribunal in the course of the evidence, that there were few factual disputes between the parties. The true issues were the correct interpretation of those facts in relation to the contractual terms of the lease.

[29] Both parties accepted that there was some mould on the silicone seal around the shower base. The issue in contention was whether the amount of mould should be treated as falling within "fair wear and tear" or went beyond that into being categorised as "damage".

[30] Similarly, with regard to the chrome drain cover, the issue in contention was also whether the discolouration and tarnishing of the chromed finish was "fair wear and tear", or went beyond that into being categorised as "damage".

[31] In respect of the strip light in the bathroom cabinet, the Respondent stated that it had been working when he left the Property on 2nd May 2019. The Applicant stated that it was not working when she checked it later on or about 27th May 2019 when she recovered possession of the Property.

[32] With regard to the claim for loss of rental, the Applicant relied on clause 2.68 of the lease to charge the Respondent compensation at a rate equivalent to the rent, calculated on a daily rate, until the Respondent's bulky items of furniture, comprising various beds and couches, were removed.

[33] The parties referred to, and agreed upon, the e-mail correspondence between them. This correspondence indicated that the Respondent advised the Applicant in advance that he was quitting the Property on 2nd May 2019. He stated in his evidence that he duly did so, and posted the only set of keys which he could locate through the letterbox of the Property when he left.

[34] The Respondent did not return, but accepted that he had left his furniture in the Property after he departed. He had tried to arrange an uplift of those items by Shelter on 2nd May 2019, but Shelter had cancelled the pick-up and arranged to reschedule it for 21st May 2019. The Respondent did not realise that leaving his furniture in the Property might indicate that he had not left it, and thought that the Applicant would let Shelter into the Property on the 21st May 2019 to uplift the items.

[35] The Applicant advised that she attended the Property with her husband on 2nd May 2019, found the keys on the floor behind the letterbox, but realised that some of the Respondent's possessions, including the furniture, were still within the Property.

[36] She was concerned that this indicated that the Respondent had not actually left, as he said he would, and her concern was compounded by the fact that there was a second set of keys to the Property provided to the Respondent which had not been left there.

[37] Fearing that she might be in breach of her legal obligations by entering the Property in these circumstances, she sought advice and left without resuming possession of it.

[38] Thereafter, she took the Respondent's confirmation by e-mail of the re-scheduled date for the furniture uplift as indicating that he was still in occupation of the Property and had not yet left it.

[39] The Applicant was contacted by the proprietor of the flat below the Property on 21st May 2019 advising that staff from Shelter were in attendance, but could not get into the Property as there was no-one there to let them in, and as a result departed.

[40] Ultimately, the parties exchanged further e-mails in which the Respondent confirmed on 27th May 2019 that he had quit the Property, and that he wished the furniture disposed of to Shelter.

[41] As a result of this confirmation, the Applicant resumed possession of the Property on 27th May, and immediately contacted Shelter to arrange an uplift of the Respondent's furniture. The earliest date that could be arranged for Shelter to attend was 6th June 2019. On that date Shelter staff attended, and the Applicant let them in to remove the furniture.

[42] The Applicant's position was that she was entitled to claim contractual compensation in terms of clause 2.68 of the lease agreement for the 35 day period from 2nd May to 6th June 2019.

[43] The Respondent confirmed that he did not dispute the terms of the lease agreement, and candidly accepted that he was not a lawyer and did not understand their legal import.

[44] The Respondent simply argued that he thought that his notification that he was leaving on the 2nd May 2019 was sufficient in circumstances where he did leave on that date.

[45] He accepted that he did not realise the potential difficulty of him leaving some of his possessions in the Property, and the potential legal effect that might have on determining whether he had removed or not.

Statement of Reasons

[46] Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

[47] Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of unpaid rental and damages against a tenant (such as the Respondent) under a short assured tenancy such as this.

[48] The Tribunal carefully considered the terms of the short assured tenancy agreement, and the evidence from the parties.

[49] Clause 2.4 of the agreement provides that the tenant is held liable for the fair net costs involved in carrying out repair and maintenance to the premises or its fixtures or fittings where such action is required as a result of negligence, or significant breach of the agreement, or mis-use, by the tenant.

[50] Clause 2.22 of the agreement provides that the tenant is liable to pay the reasonable net costs incurred by the landlord in remedying a material breach of, or significant failure to comply with, the tenant's obligations under the agreement.

[51] Clause 2.25 of the agreement provides that the tenant is not to deliberately do anything which leads to harm of the contents of the premises.

[52] Clause 2.35 of the agreement provides that the tenant is to take reasonable care in the use of the premises' fixtures and fittings, and not to deliberately damage them.

[53] Clause 2.40 of the agreement provides that the tenant is to take care to replace light bulbs and strip lights in the course of the tenancy and leave them in working order at the end of the tenancy.

[54] The Tribunal considered that the mouldy silicone and the tarnished chrome drain cover did not demonstrate negligence or mis-use, nor did they demonstrate that deliberate harm or damage had been caused to them by the Respondent or of a lack of reasonable care on his part.

[55] Rather, the Tribunal considered these to be simply fair wear and tear which might be expected after approximately 20 months occupation by the tenant. That being so, the Tribunal does not consider that the lease agreement imposes any liability on the Respondent in that respect.

[56] With regard to the bathroom cabinet strip light, the Tribunal found no reason to not accept the Respondent's evidence that the light was working when he left on 2nd May 2019. The Respondent presented as credible and reliable in his evidence, and the Applicant was, understandably, only able to assert that the strip light was not working by 27th May 2019.

[57] In those circumstances, the Tribunal was not able to conclude that the Respondent was in breach of clause 2.40 of the lease agreement, and accordingly will not award the £10.00 sought in that regard.

[58] Finally, clause 2.68 of the lease agreement provides that where bulky items belonging to the tenant are left behind after leaving (which definition the Respondent accepts his furniture fell into), and those items inhibit the landlord from reletting the premises (which as the Applicant lets the Property unfurnished, the Respondent accepted the presence of his furniture did), the landlord reserves the right to charge the tenant damages or compensation at a rate equivalent to the rent, calculated on a daily rate, until the items are removed.

[59] As the Respondent readily accepted that he had left his bulky items in the Property after he left it, and in circumstances where he did not contest in evidence that the Applicant was unable to arrange for their removal until 6th June 2019, the Tribunal concluded that clause 2.68 applied, and that the Applicant is entitled to charge the Respondent for 35 days rental, which does amount to the sum sought of £978.08.

[60] For the above reasons, the Tribunal concludes in relation to the items in dispute, that the Applicant is entitled to claim compensation of £978.08 in respect of loss of rental, but is not entitled to claim £154.00 in respect of the claim for damage to the shower base silicone, the chrome drain cover, and the replacement cost of the bathroom cabinet strip light.

[61] That being so, and having regard to the elements of the claim which were not in dispute, the Tribunal shall make an order for payment of the sum of £3,699.08.

Decision

[62] In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicant of the sum of £3,699.08.

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.

N Kinnear

22/01/20

Legal Member/Chair

Date