



**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 (“the 2014 Act”) and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/CV/20/1463**

**Re: Property at 1 Fancy Farm Place, Greenock, PA16 7LJ (“the Property”)**

**Parties:**

**Miss Lynn Gilmour, 13 Essex Road, Greenock, PA16 0JJ  
 (“the Applicant”)**

**Mr Mark Bradley, 15 Ashton Road, Gourock, PA19 1BY  
 (“the Respondent”)**

**Tribunal Members:**

**Ms. Susanne L. M. Tanner Q.C. (Legal Member)  
 Mr. Leslie Forrest (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondents should pay the Applicant the sum of FOUR HUNDRED AND FIFTY POUNDS (£450.00) STERLING; and made an Order for Payment in respect of the said sum**

**STATEMENT OF REASONS**

**1.1. Procedural background**

1.1.1. On 19 December 2019, Legal Services Agency Limited, Fleming House, 134 Renfrew Street, Glasgow, G3 6ST made an Application to the tribunal

on behalf of the Applicant. Mr Christman advised that the organisation would not be acting as the Applicant's Representative for the purposes of further procedure.

1.1.2. The Application to the tribunal is made in terms of Section 16 of the 2014 Act and Rule 70 of the 2017 Rules, seeking an order for payment against the Respondent in the sum of £450.00 in respect of a sum said to be the balance of the Applicant's deposit of £600.00 which has been retained by the Respondent.

1.1.3. The documentation with the Application comprised:

1.1.3.1. A notice to quit dated 21 August 2019;

1.1.3.2. A section 33 notice dated 21 August 2019;

1.1.3.3. Email from Safe Deposits Scotland dated 11 October 2019;

1.1.3.4. Email from Letting Protection Service Scotland dated 15 October 2019;

1.1.3.5. Email from My Deposits Scotland dated 31 October 2019;

1.1.3.6. Redacted bank statement from Applicant showing cash withdrawals to pay deposit.

1.1.4. The tribunal's administration confirmed that the Respondent is registered with Landlord Registration Scotland as the landlord of the Property.

1.1.5. On 16 July 2020, the Application was considered by a legal member acting under the delegated powers of the President and the Application was accepted for determination by the tribunal.

1.1.6. On 10 August 2020, the tribunal notified the parties that the Application had been referred to the tribunal and that a Case Management Discussion ("CMD") teleconference had been fixed for 4 September 2020 at 10.00 which both parties were required to attend. Parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application. Parties were advised that if they did not attend the CMD, this would not stop a decision or order from being made by the tribunal if the tribunal considered that it has sufficient information before it to do so and the procedure has been fair. The

Respondent was invited to submit any written representations he wished by 31 August 2020. The Application paperwork and notification of the hearing was served on the Respondent by Sheriff Officers.

1.1.7. The Respondent did not submit any written representations or documents in advance of the CMD.

1.1.8. A CMD took place on 4 September 2020 at 1000h. Reference is made to the Notes on the CMD which were sent to both parties following the CMD.

1.1.9. Both parties attended the CMD.

1.1.10. The Respondent made various admissions during the CMD which were recorded in the Notes of the CMD:

1.1.10.1. It was admitted that his mother, Mrs Sandra Bradley, had taken a cash deposit of £600.00 from the Applicant at the start of the tenancy in April 2014, which had been held by Mrs Bradley in cash;

1.1.10.2. It was admitted that his mother had given £150.00 cash to the Applicant at the end of the tenancy on 30 September 2019, following a request to Mrs Bradley by the Applicant for assistance with her removal expenses;

1.1.10.3. It was admitted that he had retained the balance of £450.00 of the Applicant's £600.00 deposit;

1.1.10.4. It was admitted that the deposit dispute was not dealt with through a tenancy deposit protection scheme because the Respondent admitted that he had failed to lodge the Applicant's tenancy deposit in a deposit protection scheme at any time and that his mother had retained the money in cash before passing it to the Respondent to deal with.

1.1.11. The Respondent stated that he was entitled to retain the balance of £450.00 of the deposit in respect of rent arrears (£121.50) and damage to the Property and its contents at the end of the tenancy, which exceeded the balance of the deposit.

1.1.12. The Applicant disputed that there were any rent arrears or that the condition of the Property at the end of the tenancy would entitle the Respondent to withhold any money.

- 1.1.13. The tribunal determined that a hearing was required to determine the disputed matters of fact.
- 1.1.14. Both parties stated that they had evidence that they wished to lodge, including the tenancy agreement, an inventory and photographs showing the condition of the Property.
- 1.1.15. Both parties indicated that they had witnesses they wished to call. The Applicant intended to call one or more witnesses to speak to the condition of the Property at the beginning and end of the tenancy. The Respondent intended to call his mother as a witness. Both parties were asked to provide a list of witnesses and their telephone contact details and ensure that the witnesses are available on the date of the hearing. The tribunal chair explained the requirement for lists of witnesses and documents and stated that a Direction would be issued in advance of the hearing.
- 1.1.16. The case was adjourned to a hearing, to be held by teleconference on a date to be notified to parties.
- 1.1.17. The tribunal issued Directions to parties dated 4 September 2020.
- 1.1.18. The Applicant lodged the following in response to the tribunal's Directions:
- 1.1.18.1. An email of 13 October 2020, stating that it attached an image of a patio installed three months before the end of the tenancy, attaching an image of a patio; a page with six images of a property; a page with an image of items in a room; and
  - 1.1.18.2. A list of witnesses on 14 October 2020, with one witness Mr Alan Penman, whose contact details were provided.
- 1.1.19. The Respondent (via his mother) lodged the following in response to the tribunal's Directions:
- 1.1.19.1. An email of 19 August 2020 attaching nine undated and untitled images;
  - 1.1.19.2. An email of 27 August 2020 attaching undated and untitled 35 images;
  - 1.1.19.3. A second email of 27 August 2020 attaching five undated and untitled images; and
  - 1.1.19.4. An email of 4 September 2020 attaching an image of a page of a tenancy agreement (which had been produced at the CMD).
- 1.1.20. The Respondent did not lodge a List of Documents or a List of Witnesses. The Respondent did not lodge any inventory for the Property.

## **2. Hearing: 15 October 2020, 1000h, by teleconference**

2.1. The Applicant attended the hearing.

2.2. The Respondent did not attend the hearing. The Respondent had been notified by email on 16 September 2020 of the date, time and joining details for the adjourned hearing. The tribunal waited until 1010h. As a courtesy the tribunal clerk telephoned the contact number provided by the Respondent to the tribunal's administration to ascertain if he intended to join the hearing. A gentleman answered the phone and stated that he was Mr Bradley and resided at the address stated in the Application. However, he stated that he was not Mr Mark Bradley and that no-one called Mr Mark Bradley resided at the address.

2.3. The tribunal adjourned until 1030h.

2.4. The tribunal was satisfied that the requirements of Rule 24(1) regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the party present and the material before it, in terms of Rule 29 of the 2017 Rules.

2.5. The Applicant sought to lead evidence from herself and one additional witness, Mr Alan Penman. The Applicant had intimated at the CMD that she intended to lead a witness to speak to the condition of the Property at the start of the tenancy and anticipated that this would be one of her sons. The Respondent therefore had notice at the CMD that such evidence was likely to be lead and had the opportunity to lodge his own list of witnesses and list of documents in response (which he did not do, despite being directed to do so). The Applicant explained that her son was unavailable because he was working but that Mr Penman had also been involved on the day of her removal from the Property at the end of tenancy and would be able to speak to the condition of the Property. The tribunal was satisfied that the Applicant should be allowed to call the named witness despite the fact that the list of witnesses was lodged late.

2.6. The tribunal heard evidence and submissions from the Applicant and from Mr Penman.

### **2.7. The Applicant's evidence**

2.7.1. The Applicant stated that her tenancy of the Property started in or about April 2014. She thinks that the start date was the 14<sup>th</sup> April 2014. She said that she had paid a deposit of £600.00 in cash instalments to the Respondent's mother, Sandra Bradley, before she moved in. The deposit was not paid into a tenancy deposit protection scheme. The deposit was

held by the Mrs Bradley. The tenancy ended on 30 September 2019. Mrs Bradley repaid £150.00 of the deposit to the Applicant's son in cash at the end of the tenancy and kept £450.00. The reason that £150.00 was paid was to go towards a van for the Applicant to remove herself from the Property. Mrs Bradley told the Applicant that she was going to give the balance to her the next day. The next day came. The Applicant's new landlord phoned Mrs Bradley and asked, 'Can Lynn have the deposit to pay me?' and Mrs Bradley said, 'no'. The Applicant then spoke to Mrs Bradley and she said that she was not giving the Applicant her deposit back because the house was a mess. The Applicant could not understand why Mrs Bradley was saying this. Mrs Bradley had previously told the Applicant how houseproud she was and asked her to stop cleaning on the last day of the tenancy. Mrs Bradley was there when the Applicant was cleaning the property at the end of the tenancy. Mrs Bradley was actually in the house on the night that the Applicant was moving, as was the Respondent's father, Mr Kevin Bradley.

2.7.2. When the Applicant moved in she was not given any kind of inventory or report on condition by the Respondent or his mother. The Property was nice and clean when she moved in but there were some issues. There were some switches falling off the wall. A curtain rail came down which had been glued on. The Applicant did not want to complain because she stated that Mr Bradley (senior) was "a wee bit strict and could not be bothered to fix things". There was a crack on the wall behind the door when she moved in. The Applicant's dad put a stopper in the floor so that it did not get any worse.

2.7.3. Over the years, the Applicant saw Mrs Bradley every day. Mr and Mrs Bradley stayed across the street from the Property. Mr and Mrs Bradley often arrived unannounced. The Applicant woke up one morning and Mr Bradley was emulsifying the window sills. He just used to appear. One day Mrs Bradley came straight in the front door and said to the Applicant's son: 'you have to move out'. The Applicant was not in the Property at the time but her son told her what had happened. That was in 2019 towards the end of the tenancy and was the first time that Mrs Bradley had said anything about ending the tenancy.

2.7.4. During the tenancy, when the Applicant complained about the gas fire not working because the switch had broken, Mr Bradley came over and came into the dining room and said that if the Applicant wanted the fire fixed she would have to move out for two weeks. The Applicant's late husband was there and said afterwards to the Applicant that he did not like Mr Bradley and that the Applicant should not let him back into the Property. The fire did not get fixed. It remained broken for the rest of the tenancy.

- 2.7.5. In response to the email which Mrs Bradley had sent to the tribunal on 19 August, the Applicant stated that it broke her heart when Mrs Bradley said that the Property was uninhabitable. The Applicant liked Mrs Bradley and can not understand why she has said that. The Applicant does not accept that she left the property in state that was uninhabitable. The Applicant does not accept that industrial cleaning taking 5 days would be required at the end of her tenancy. She stated that the Respondent moved straight into the Property when she was moving out.
- 2.7.6. The Applicant repeated that she had said to Mr Bradley at the CMD to please tell the truth. She stated that the submissions that they have made in the case are all lies.
- 2.7.7. In relation to the undated/untitled photographs lodged by the Respondent, the Applicant stated that she feels personally that they have done it themselves. She stated that the carpet may have been dirty as her boys worked in the building trade but that she had paid £400.00 for the carpet to be laid. She stated that she emulsioned the hall every year and that Mr and Mrs Bradley were aware of that and had complimented her on the work.
- 2.7.8. In relation to the photograph produced by the Applicant of a patio said to have been laid a few months before the end of the tenancy, the Applicant stated that it had been lodged to show how the garden was at the end of the tenancy. She laid the patio at her expense. She asked Kevin Bradley first because they had to take trees down and remove some debris from that area of the garden. The Applicant decided to put down a patio for her late husband who passed away in the house. Mr Bradley agreed to that being fitted. Mr Bradley was "all chuffed" with the finished result.
- 2.7.9. In relation to whether there was any inventory and what was provided in the Property at the start of the tenancy, the Applicant stated that there was a cooker. Every time they switched it on it blew all the lights. About a year later Mr Bradley Senior got someone in to fix the cooker. Then it all blew up again. When Mr Bradley and the man left, Mr Bradley said to the Applicant, 'I will not be fixing anything again, you are costing me too much money'. The Applicant got her own electrician. All the fuses were all wrong and they got it all adjusted. The Applicant stated that she had arranged for this work and paid for it personally.
- 2.7.10. The landlord did not do anything like a gas safety certificate or an electrical certificate at any time during the tenancy.

- 2.7.11. In relation to the page with six images of a property which was lodged by the Applicant, the Applicant stated that they were taken on 30 September 2019 after her items had been moved from the Property. She lodged them to show how tidy and clean it was when she moved out. Her niece, Michaela Mitchell (then aged 16) took the photographs inside the Property using the Applicant's iphone. The photograph of the back garden was already on the Applicant's phone. Mr Bradley senior was upstairs in the Property at the time and saw the Applicant's niece taking photographs and told her niece to hurry up.
- 2.7.12. Because Mr and Mrs Bradley rushed the Applicant out of the Property on 30 September, the Applicant left some personal sentimental items in a box at the Property with the intention of collecting them the next morning, including an angel statue and silver chains, with the letter R for Raymond, her late husband, her late husband's wallet and her provisional licence. She had also left a box with her gran's dishes. She told Kevin Bradley that there was still a box to collect because they were rushing her. She had high anxiety. She put the box down to go and lift up another box. She stated that the little box had gone out of her mind given the rushed way that the Respondent and his family were insisting she leave the property. She went straight back over to the property the next morning at 8am and the items she had left had been dumped. She stated that she had checked the bins to try to retrieve her items and some items had been binned in plastic bags. Some items which could not be found were irreplaceable having come from the Applicant's grandmother (dishes).
- 2.7.13. On the evening of 30 September, Mark Bradley was sitting in a van outside the Property with all of his belongings. He was waiting to move in as they were moving out. The Applicant had never seen Mark Bradley before.
- 2.7.14. The Applicant did not see any of the Bradleys taking photographs of the property. Mark Bradley was taking stuff out of the van and putting it into the Property while the Applicant was still there and trying to move her things out.
- 2.7.15. The Applicant thought that the property was left by her in move in condition and she would have been happy to move into a property in such a condition.



## **2.8. Witness evidence: Mr Alan Penman**

- 2.8.1. Mr Alan Penman stated that he is aged 40, unemployed and provided his address to the tribunal.
- 2.8.2. He knows Lynn Gilmour as a friend. He has known her family for quite some time. He was at the property helping with the removal from 1 Fancy Farm place to a new address on 30 September 2019. At the time Mr Bradley Senior was constantly phoning and coming to the house to make sure that Lynn was getting out on time. They never gave Lynn time to get out of the property. They said to Mr and Mrs Bradley that they would come back and collect a box that they had not been able to take. It had got dark and there was not proper lighting outside. They had to go to the next property and drop off items and then return the van. The property that was left behind they were told that Mr Bradley and Mrs Bradley would look after and they could pick it up the next day. They returned the following day at 8am and Lynn's personal belongings had been put in the skip. The neighbour saw them removing the property from the address.
- 2.8.3. He was there for most of the day on 30 September moving ~~her~~ ~~stuff~~ items belonging to the Applicant from the old address to ~~the~~ her new address. He was there until the point that Mrs Bradley and Mr Bradley turned up at nighttime. They turned up and were trying to find out how long Lynn was going to be. They said that they had an articulated lorry coming from Wales with her son's belongings. The door was open at the time. Lynn was going around trying to clean and tidy the place. It was clean and tidy when she left. Mr and Mrs Bradley were adamant that she had to be out by a certain time. At the said time Lynn asked Mrs Bradley about her deposit. Mr and Mrs Bradley assured her that they could not give her the deposit that day and that the next day it would be put into Lynn's bank account.
- 2.8.4. Mr Mark Bradley arrived in a lorry with a friend, with furniture to go into the Property. Mr Penman said to Mr Bradley, 'you'll need to wait as we are still trying to get stuff out of the property'. There were issues due to it being dark and there was a broken light. The staircase was quite steep. They said that Lynn's personal belongings would be there the next day to pick up.
- 2.8.5. He has recently seen the pictures Lynn took on the last day of the tenancy. They are an accurate representation of how the property looked when Lynn moved out.

2.8.6. He thinks that Lynn being rushed out of the property on the night of 30 September meant that some things were left in a way that she might not have wanted to leave them as there were still things to collect.

2.8.7. To him, the documentation that was given to Lynn to leave the Property was not legal at all. Lynn was under so much pressure and stress trying to find a property to move to. He was disgusted by the way that Mr and Mrs Bradley acted at the time.

2.8.8. Mr Bradley junior turned up with this big lorry. As Mr Penman and the Applicant's sons were taking items out, Mr Bradley junior opened the tailgate of the lorry and took boxes up the stairs into the Property.

2.8.9. When Mr Penman went back the next day the father was at the property. The doors were locked and no-one was answering. On the night Mr Penman saw Mark Bradley moving in boxes. Mr Penman and the Applicant tried to get out and the Bradleys were trying to get in. It felt terrible. Mr Penman felt really sorry for Mr Gilmour. Lynn's sons and brother were helping as well. The van they had hired had to be taken back by a certain time.

2.8.10. In relation to one of the photographs in the bundle lodged by the Respondent, Mr Penman stated that the rooms were empty of furniture when the Applicant left. He does not recall two chests of drawers and two mattresses being left in a room. Every room was clear of furniture and personal belongings. The only furniture in the house that belonged to the landlord was the dining table and 6 chairs. They are shown in one of the Applicant's photographs taken on 30 September.

2.8.11. Mr Penman was thanked for his evidence and left at 11.20.

## **2.9. Applicant's evidence regarding the Respondent's allegation that there were rent arrears of £121.50**

2.9.1. The Applicant stated that she was not in rent arrears at the end of the tenancy. She does not understand why the Respondent would say that. She has never been in rent arrears. She and her family received some benefits. She put the balance, normally £200 or £300, in cash through Mr and Mrs Bradley's the letterbox each month. It depended on whether the Applicant's boys were working or not how much she received for benefits. In the whole 5 and a half years of the tenancy the Applicant never received a receipt for cash payments of rent. Mrs Bradley would not allow rent to be paid through the bank. Later in the tenancy the Applicant asked the Council, how much of her rent has been paid. The Council never notified

her that she was overpaying for a period. She did not have a receipt. She then decided to phone the council every month. For the last year she had contacted the council every month. She never got the overpayments back.

2.10. She did not have an agreement with the Respondent or his mother that there was £121.50 for arrears or that it could be deducted from the deposit.

2.11. The Applicant stated that she had nothing else to add and was seeking repayment of £450.00 which the Respondent or his mother had kept.

2.12. The tribunal adjourned to deliberate.

3. The tribunal makes the following findings-in-fact:

3.1. The Respondent is the registered proprietor of the Property.

3.2. The Applicant and Respondent entered into a tenancy for the Property which started in or about April 2014.

3.3. The Respondent's mother, Mrs Sandra Bradley, took a cash deposit of £600.00 from the Applicant at the start of the tenancy in April 2014.

3.4. The Applicant's deposit was held by Mrs Bradley in cash until the end of the tenancy.

3.5. On or about 30 November 2019 the Respondent's mother gave £150.00 cash to the Applicant, following a request from the Applicant for assistance with her removal expenses.

3.6. The Respondent via his mother retained the balance of £450.00 of the Applicant's £600.00 deposit.

3.7. The Applicant requested repayment of the balance of her deposit and the Respondent's mother refused to make payment.

3.8. The deposit dispute was not dealt with through a tenancy deposit protection scheme because the Respondent failed to lodge the Applicant's tenancy deposit in a deposit protection scheme at any time.

3.9. There were no rent arrears at the end of the tenancy.

3.10. The Property was left by the Applicant in an acceptable condition at the end of her tenancy.

3.11. The Respondent moved into the Property immediately upon the Applicant moving out of the Property on 30 November 2019.

3.12. The Respondent moved in items of furniture and personal belongings into the Property on 30 November 2019.

4. The tribunal makes the following Findings in fact and law

4.1. There was nothing in relation to the condition of the Property at the end of the tenancy, relative to the condition at the start of the tenancy, which entitled the Respondent to retain any part of the Applicant's deposit.

4.2. There were no rent arrears which entitled the Respondent to retain any part of the Applicant's deposit.

## 5. Discussion

5.1. The tribunal found both the Applicant and the witness Mr Penman to be credible and reliable witnesses on the crucial facts in dispute.

5.2. The tribunal took into account the admissions made by the Respondent at the Case Management Discussion which were recorded in the Notes of the Case Management Discussion and sent to the Respondent. No comment was made by him following receipt that anything so recorded was inaccurate. He accepted that of the Applicant's original £600.00 cash deposit, £150.00 had been given to the Applicant to hire a van and £450.00 had been retained by his mother and given to him to deal with.

5.3. The tribunal accepted the Applicant's evidence that the sheet of images of the Property were taken by the Applicant's niece on 30 September 2019 after the Applicant had removed the majority of her personal belongings from the Property (with the exception of her box personal belongings which were discussed in evidence). They show an apparently clean and tidy property.

5.4. The tribunal accepted the Applicant's evidence that as she was moving out of the Property, the Respondent was moving his possessions into the Property. That would appear to be at odds with the assertion made by the Respondent and his mother that five days of deep cleaning were required in order to make the property inhabitable. In any event, no invoices or any other vouching was produced by the Respondent to substantiate any claim for deep cleaning or indeed any other matters.

- 5.5. The tribunal took into account, in so far as it was able to do so, the written representations and documents lodged by the Respondent. However, the photographs produced were untitled and undated and the tribunal was unable to place any weight on the evidence in the absence of oral testimony. There was no record of condition at the start of the Property to provide a comparator. No inventory was produced despite the Respondent alleging at the CMD that there was an inventory. No record was produced of an inventory or condition check at the end of the tenancy. From the oral evidence of the Applicant, which was accepted by the tribunal, there would have been no opportunity to do one prior to the Respondent moving his possessions into the Property.
- 5.6. There was no evidence produced by the Respondent to substantiate the allegation that there were any rent arrears. The tribunal accepted the Applicant's evidence that there were no rent arrears and that in fact she had made overpayments for a period of time. The tribunal accepted the Applicant's evidence that she made all rent payments in cash to Mrs Bradley and that no receipts were provided.
- 5.7. The tribunal determined on the basis of the Application (including supporting documents) that the Applicant had proved on the balance of probabilities that the Respondent owes her the sum of £450.00 in respect of the balance of her deposit which the respondent has no legal right to retain; and made an order for payment by the Respondents to the Applicant for the said sum.

## **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.**

Susanne Tanner

**15 October 2020**

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**Ms. Susanne L. M. Tanner Q.C.  
Legal Member/Chair**