



**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/20/0727**

**Re: Property at 5 Gayfield, Arbroath, DD11 1QJ (“the Property”)**

**Parties:**

**Mr Alan Davidson, 5 Gayfield, Arbroath, DD11 1QJ (“the Applicant”)**

**Mr Brian Denholm, Mrs Lesley Denholm, 64 Millgate Loan, Arbroath, DD11 1QW (“the Respondent”)**

**Tribunal Members:**

**Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £2227.00.**

**Background**

1. By application dated 25 February 2020 The Applicant applied to the Tribunal for an order for payment for damages arising from the Respondent’s occupation of the property under a Short Assured Tenancy. The Applicant provided the Tribunal with a copy of the tenancy agreement, copy correspondence and estimates for repairs. The Applicant subsequently submitted photographs and video evidence.
2. By Notice of Acceptance dated 12 May 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
3. The Respondent’s representative Mr David Rogers of Boyles, Solicitors, Dundee submitted written representations on behalf of the Respondent in advance of the Case Management Discussion.

4. A Case Management Discussion was held on 5 August 2020. At that time, it was accepted that due to an oversight on the part of the Applicant the Respondent's deposit of £750.00 had not been lodged in a tenancy Deposit Scheme. It was also accepted that the Applicant had allowed his landlord registration to lapse. The Tribunal continued the Application to a full hearing of the Tribunal.
5. A hearing was held by teleconference on 1 October 2020. The Applicant failed to attend and the application was dismissed.
6. Following a request from the Applicant for a recall of the Tribunal's decision to dismiss the application the Tribunal, in its decision of 30 October 2020, accepted the Applicant's explanation for his failure to attend the hearing on 1 October 2020 and recalled its decision and a further hearing was assigned.
7. The Applicant submitted further productions by letter dated 23 November 2020.
8. The Respondent's representative submitted further written representations by email dated 6 January 2021.
9. A further hearing took place by teleconference on 19 January 2021 and was adjourned at the request of the Respondent's representative in order that witnesses could view video evidence submitted by the Applicant.
10. By email dated 15 March 2021 the Applicant submitted further written representations and sought to amend his claim and the sum sought to £5439.00.
11. A Hearing was held by teleconference on 30 March 2021 and following evidence being led on behalf of both parties was adjourned to a further hearing for the Respondent's representative to lead evidence from his remaining witnesses.
12. A further hearing was held by teleconference on 29 April and was adjourned due to the Respondent's witnesses being unavailable.
13. By email dated 17 May 2021 the Respondent's representative submitted further documents and advised the Tribunal that he did not intend to lead any further witnesses.
14. A further teleconference hearing was held on 19 May 2021. The Applicant attended personally and the Respondent was represented by Mr David Rogers.

## Summary of Evidence

15. The Applicant referred the Tribunal to his written submissions and the photographs and videos. He explained that the kitchen units had been painted jet black by the Respondent. The work tops had been cut and removed. He went on to say that the Respondent had removed a Victorian fireplace from the kitchen. He said the property had been left unrecognisable and in a dirty state. There had been holes drilled through ceramic tiles. Some kitchen units were hanging off the wall.
16. The Applicant said he had claimed £120.00 per day for his time spent clearing rubbish from the property and cleaning and going to the recycling centre.
17. The Applicant said that a screw had been screwed vertically through the threshold bar between rooms and had penetrated a water pipe. He did not know why the screw had been put there. He had replaced the damaged pipe himself and had claimed £235.00. He said the cost of the copper pipe was £5.00 and the fittings £18.00. The rest was his labour charge.
18. The Applicant said that he was claiming for lighter cleaning work that he would have expected the Respondent to have done at the end of the tenancy and that they had failed to do. He said it took many hours over several days.
19. The Applicant said that he had claimed £905.00 for redecorating costs and thought this was lower than the actual cost would be. He explained he intended to redecorate the property over the next six months and had not started the work yet. He said the Respondent had done some painting but that it was very shoddy work.
20. The Applicant said that the Respondent had erected a shed on the patio outside the kitchen door and had put another in the garden on a slope. He said the shed on the patio had to be removed and could not be dismantled but had to be broken up. It could not be salvaged. He was claiming £140.00 for the time involved in removing the shed.
21. The Applicant said that the Respondent had planted trees in the garden and that he had not wanted the trees and had cut them up and removed them and was claiming £100.00 for his time.
22. The Applicant said that several doors in the property had been sealed with silicone, sound proofing panels and screws and had to be forced open. The back door had been modified and he had to break it open. There had been four-inch screws in the doors and all the paintwork was damaged. He said it had taken a lot of time to fix.
23. The Applicant confirmed he was not making any claim for the white goods in the kitchen.

24. In response to questions from Mr Rogers the Applicant confirmed he had been renting properties since 2010 and was an experienced landlord. He said his partner had returned the deposit to the Respondent when he was away at sea and that it would not have been obvious to her that there were issues with the property.
25. Mr Rogers suggested to the Applicant that the kitchen units had been painted with blackboard paint. The Applicant said he had never been asked if it could be painted and would not have allowed it.
26. The Applicant disputed that there had been a draught caused by the fireplace in the kitchen.
27. The Applicant confirmed that a gas engineer had fitted a new gas boiler at the property in July or August 2019. He said he did not initially hear the noise from the leaking pipe when he moved back into the property and had at first thought it was coming from the boiler. He thought the leak was fixed in January or February 2020.
28. **Jacqueline Balfour** gave evidence for the Applicant. She referred the Tribunal to her written statement. She said she had made a judgement call to return the deposit on the basis that Mrs Denholm was going to return to the property to remove the rubbish and clean it. She said Mrs Denholm had not kept to her side of the bargain.
29. In response to a question from Mr Rogers as to why she had returned the deposit Ms Balfour said that she had already explained why but that she had trusted Mrs Denholm to make good the damage and clean the property. She said there had been an agreement between the Applicant and the Respondent that any modifications to the property would be restored to its original condition. Ms Balfour said that she had not inspected the whole property and there was a lack of understanding as to what had been done to the property.
30. Ms Balfour said that when she returned the deposit it appeared that other than removing their furniture and belongings nothing else had been done to the property but she had returned the deposit on the understanding that everything would be made good before the Applicant returned from sea. She went on to say that at the time she had felt very rushed by Mrs Denholm. She said the Applicant was relying on the Denholms to keep their word and that Mrs Denholm kept repeating just hand over the deposit.
31. In response to a question from the Tribunal Ms Balfour confirmed she had no background in property management or in property letting. She confirmed she had left the Respondent with a key and had expected them to repair and clean the property.
32. Ms Balfour said she had not seen the kitchen prior to it being left in the way it was by the Respondent but would have been very upset if her kitchen had been treated in the way it had by the Respondent.

33. The Applicant's daughter **Marie Davidson** gave evidence. She said that every room in the property had been damaged. She said in one room she was in there were fifteen drill holes in the wall. She spoke of it taking a day to prise open the door to the playroom. She said she could not use the door as it had been boarded up and the frame ruined.
34. In response to a question from Mr Rogers, Ms Davidson said that she had left the property in about 2013 and returned in about 2018 but that she had continued to visit the property in the years she had been away and nothing had changed. She said she had been living with her dad for the past three years.
35. In response to a query from the Tribunal Ms Davidson said that the kitchen had been left in a shambles and was not the kitchen she had grown up in. The doors of the cabinets were hanging off and there had been much work to do.
36. The First Respondent **Mr Brian Denholm** gave evidence. He confirmed he had been fostering children for fifteen years and had lived at the property for two years. He said that when he moved into the property it was in a poor state both inside and out. He said that very little maintenance had been done on the property and that grout was missing from tiles and sealant missing from a sink. The bath was open and needed to be boxed in. The bathroom window was fitted with clear glass and needed to put frosting on it for privacy. According to Mr Denholm things had been let go and that the Applicant had said he had not been able to get the outside painted and that he had arranged that and had also painted the living room. He said it gone patchy and the painter had said it needed to dry out.
37. Mr Denholm went on to say that for health and safety reasons he had to make changes to the property. He explained that as foster carers they were subject to health and safety checks from the social work department and that rooms had to be made safe and comply with fire regulations. There were extensive checks every year.
38. Mr Denholm said he had informed the Applicant about the changes and that in addition he was quite often in the property. Mr Denholm went on to say that he had agreed that the Applicant could take the white goods from the property for another property as the Respondent had their own white goods. He said that they had a good relationship with the Applicant.
39. Mr Denholm said that he had removed the fireplace in the kitchen as there was harling missing outside and he had put wood inside and then tongue and groove in front that could be easily removed and stored the fireplace in a shed that he had purchased. He said the Applicant had never complained up until the time they had moved out.
40. Mr Denholm said that the kitchen cupboards had been painted black with blackboard paint. He said that the Applicant had thought it was a good idea at the time. Mr Denholm said that the paint could be removed and had to be

touched up every week. He said it was easily removed with soap and water. In response to being asked why he had not removed the paint on leaving the property Mr Denholm said that previously the Applicant had said the property had never looked so good. Mr Denholm said that they had been helpful with the Applicant as he had with them.

41. Mr Denholm said that the kitchen floor had been covered with an old piece of linoleum. After the boiler had been replaced a radiator had leaked covering the floor in black sludge that could not be removed so the linoleum had to be removed. The radiator had been repaired he thought by the landlord's plumber.
42. Mr Denholm said he was a joiner to trade and was able to fix things around the house. He said that he had inserted soundboard between the bedroom doors but that it had not been screwed in just jammed in place and was easily removed with a hammer or screwdriver.
43. Mr Denholm confirmed that he had not asked for permission to erect the sheds at the property as the Applicant had been at sea. He explained that the pantry roof had been leaking and that he needed to store the fireplace and fender and the kitchen worktop.
44. Mr Denholm confirmed he had viewed the video lodged by the Applicant and that it seemed there was a substantial amount of rubbish left in the property. He said he accepted there were probably a couple of bags of rubbish but not van loads. He said there had been three people helping to clean up the property at the end of the tenancy.
45. Mr Denholm said he had no knowledge of a water leak at the property. He said he had never put anything down there at all and would never have used a four-inch screw.
46. In response to a question from the Applicant Mr Denholm explained that water had been coming into the fire place as a result of the missing harling and he had removed the fireplace to protect it.
47. Mr Denholm denied that there had been a urine-soaked carpet in a bedroom. He said that the property was regularly inspected by social work and that they would not sign off on a property if they saw that.
48. Mr Denholm denied that he had left a screw in a bed or a broken door handle. He denied removing the vinyl under the carpet in the living room
49. Mr Denholm went on to say that the Celotex could easily have been removed and that if the Applicant had asked, he would have done the job. He said he would have fixed the leaking pipe if there had been any sign of a leak but there was none. If he had burst a pipe, he had insurance cover.
50. In response to further questions from Mr Rogers Mr Denholm said that two weeks prior to moving out the Applicant and his partner had attended at the

property and had said it had never looked so good and that they would definitely get their deposit back. He said the Applicant had looked in every room at that time. He said that he had never done anything in the threshold of the doorway between the kitchen and the adjoining room. As far as he was aware no floor boards had ever been lifted unless the plumber had lifted them when replacing the gas boiler.

51. In response to a query from the Tribunal Mr Denholm confirmed the kitchen worktop had been wrapped in polythene and stored in a shed but there had been a lot of rain and it had been badly affected. He said he accepted responsibility for replacing it.
52. Mr Denholm disputed that the kitchen cabinets were in a poor state of repair when he left and that the paint could have been washed off or the Applicant could have bought new door fronts.
53. **Mrs Lesley Denholm** gave evidence. She confirmed she had been a foster carer for fifteen years. She said she had lived at the property for two years from 2016 to 2018. She said that when she moved into the property the décor was not bad but it had been quite dirty and had taken two and a half weeks to get it up to standard. She explained that as foster carers the property was subjected to Health and Safety checks every year.
54. Mrs Denholm said that it had been necessary to panel in a bath and also the back door had to be locked.
55. Mrs Denholm said that she had spoken to the Applicant about painting the kitchen cabinets and that she had used blackboard paint that can be washed off with hot soapy water. She explained that it had been used to post positive quotes and that the Applicant had thought it was a fantastic idea. She said he had given verbal approval.
56. Mrs Denholm confirmed the linoleum on the kitchen floor had to be removed after it was damaged by a leaking radiator.
57. Mrs Denholm confirmed the kitchen fireplace had been removed and stored in a shed and this had given them more room. There was no other reason for removing it.
58. Mrs Denholm said that two rooms on the top floor had insulating foam put in the doors but it had not caused any damage to the doors.
59. Mrs Denholm confirmed that the sheds had been put in the garden without permission and had been used to store the Applicant's furniture.
60. Mrs Denholm confirmed she had viewed the videos submitted by the Applicant. She did not know how there were so many bin bags and why they were open as the bags left behind had all been tied up. She said none had been left on the floors and seven or eight had been left at the property.

61. With regards to the return of the deposit Mrs Denholm said that the Applicant and his partner had visited the property before the end of the tenancy. The Applicant had sat in the kitchen and said that his partner would draw down the deposit and arrange a date and time. She said that she asked if he wanted to look round the property and he said no. She said he never raised any problems at all.
62. Mrs Denholm confirmed that she had intended to return to the property to remove the bin bags but had not managed. She said that the Applicant's partner had returned the deposit and had not raised any concerns. Mrs Denholm said she had told her there was not much to do. She said the Applicant's partner had taken a couple of photos. Thereafter they heard nothing further for four months.
63. Mrs Denholm confirmed they had insurance cover that would have covered any claim for a water leak.
64. In response to questions from the Applicant Mrs Denholm confirmed the vinyl in the living room had been removed when it had been replaced with a carpet. She could offer no explanation for the Applicant's allegation that the carpet in the blue bedroom was soaked with urine or for the suggestion that McDonalds wrappers had been left in the bedroom. Mrs Denholm said that the Applicant had been impressed with the black painted kitchen units and the reason for doing it. She explained that following the end of the tenancy time had flown and she had not returned to the property to finish cleaning. She said that following the new gas boiler being installed the kitchen radiator had leaked and needed to be flushed out. She said that she had not used the same plumber as the one who fitted the new boiler. She confirmed that in addition to the three foster children living in the property her son and daughter lived there. Mrs Denholm said she had no knowledge of any burst pipe.
65. In response to further questions from Mr Rogers Mrs Denholm confirmed the photographs submitted by the Applicant were not date stamped. She also confirmed that the Applicant had not specifically told her to remove the black paint from the kitchen cupboards nor had the Applicant ever provided an inventory. She said that she was not aware of there being any screws in the door frames holding the Celotex in place.
66. In response to a query from the Tribunal Mrs Denholm said that the Applicant's partner had taken a photo of the living room but had not taken any photos upstairs. In response to a further question, she said there was nothing at all wrong with the condition of the kitchen units and the blackboard paint would have washed off with warm soapy water. Mrs Denholm went on to say that she had never mentioned to the Applicant that the paint could be washed off but that if there had been a problem with that or with the rubbish the Applicant could have messaged her. She explained she had been busy setting up their new home and had not returned to the property although she had retained a key. She said she did not know what she had done with the key but thought it could



be in her safe. She did not think it could have been given to another person. She denied causing any damage to the property.

67. **Ms Elma Langham** gave evidence. She explained she was a support worker for Ark Housing and a friend of Mrs Denholm who she helped by child minding the foster children. She said she had done so on 15 -20 occasions and never had any concerns about how the property was being kept. Ms Langham went on to say that she had helped the Respondent when they were moving out of the property. She said she had been present on one occasion when the Applicant and his partner had attended at the property. She said she heard his partner ask if he wanted to look round the property and he had said no and that it looked better than when the Denholms first moved in. In response to a question about a smell of urine in one of the rooms Ms Langham said that none of the rooms had a smell. She said that the rubbish bags had been put outside at the end of the tenancy and there was no loose rubbish in the property. Ms Langham confirmed she had viewed the video submitted by the Applicant and that they were not consistent with how she remembered the property had been left. She said there may have been eight bags of rubbish inside the property.

### **Closing Submissions**

68. Mr Rogers referred the Tribunal to the Social Work Reports submitted and suggested that this was evidence that the Social Work Department had no Health and Safety concerns regarding the Respondent or the property whilst accepting that the reports were not dated around the time of the end of the tenancy. Mr Rogers went on to say that the property had been left in an acceptable manner by the Respondent. The photographs and videos lodged by the Applicant were not date stamped. He said that whilst the weight of the evidence was a matter for the Tribunal there was evidence that the Applicant had been overheard to say that the property never looked better. The Applicant had been well aware of the alterations made to the property and were made with his express consent. He had complimented the idea of positive messages for the foster children on the kitchen units and had never asked for the paint to be removed. The paint could have been removed with warm soapy water. The fireplace had been removed to prevent ingress from wind and rain. The Respondent were foster carers subject to regular inspections. They rejected causing any damage to the water pipe and had insurance to cover any such damage which would in any event have been visible. Mr Rogers accepted that there would have been a small number of plastic bags left at the property but that this was the Respondent's only liability.

69. The Applicant did not have any substantive closing remarks and relied on the written and oral evidence submitted.

## **Findings in Fact**

70. The parties entered into a Short Assured Tenancy that commenced on 10 December 2016 and ended on 9 November 2018.
71. The Respondent's deposit of £750.00 was not lodged in an approved Tenancy Deposit Scheme and was returned to the Respondent at the end of the tenancy.
72. The Respondent retained a key to the property on the understanding that further cleaning would be undertaken and any remaining rubbish bags would be removed.
73. The Respondent did not obtain written consent for any alterations to the property.
74. The Respondent removed a fireplace from the kitchen at the property and stored it in a shed.
75. The Respondent erected two sheds at the property and did not remove them at the end of the tenancy.
76. The Respondent removed a worktop from the kitchen and stored it in a shed where it was damaged by water ingress.
77. The Respondent painted the cupboard fronts in the kitchen with blackboard paint.
78. The Respondent did not advise the Applicant the paint could be washed off.
79. The Respondent did not remove the paint at the end of the tenancy.
80. The Respondent carried out further alterations to the kitchen.
81. The Respondent installed Celotex in the doorways between the upper floor bedrooms and did not remove this at the end of the tenancy.
82. The Respondent damaged the walls in several rooms leaving drill holes at the end of the tenancy.
83. The Respondent did not remove all the rubbish bags from the property at the end of the tenancy.

84. The Respondent did not return to the property after the tenancy ended to complete the cleaning of the property despite having retained a key and having agreed to do so.
85. The Respondent planted a row of trees in the garden of the property.
86. The Applicant discovered a leaking water pipe in the property caused by a screw being inserted through a floorboard.

### **Reasons for Decision**

87. The Tribunal found the Applicant to be a credible and reliable witness. It also found Ms Balfour and Ms Davidson to be credible and reliable witnesses. Much of Mr Denholm's evidence was also credible but there were inconsistencies in his evidence. For example, he claimed that Mr Davidson on his visit to the property prior to the termination of the tenancy inspected every room when all the other witnesses stated that he did not inspect the property at all. The evidence of Mrs Denholm was on the whole credible although the Tribunal did not accept that she had ever told the Applicant that the blackboard paint could be washed off with warm soapy water. The Tribunal found the evidence of Ms Langham to be largely credible and reliable.
88. Clause 11.4 of the Tenancy agreement requires the Tenant to "*ensure the property and its fixtures and fittings are kept clean during the tenancy.*" Clause 11.5 states "*The Tenant agrees not to make any alteration to the accommodation, its fixtures or fittings, nor to carry out any internal or external decoration without the prior written consent of the Landlord.*" Although it was suggested that the Applicant had either implicitly or expressly given verbal consent to the kitchen alterations there was no suggestion that the Applicant had ever provided written consent as required by the terms of the tenancy agreement. The Tribunal was of the view that although the Applicant may not have taken issue with the kitchen units being painted and the other alterations that had been made at the time of his visits to the property, he was entitled to expect that at the end of the tenancy the property would be returned in the condition it was at its commencement. The Tribunal was satisfied that the photographs and videos although not dated or time stamped were reflective of the condition of the property as discovered by the Applicant on his return from working at sea. The Tribunal was satisfied that the kitchen units had not been returned to their original condition and that the Applicant's worktop had been damaged. The kitchen cupboards were not clean. A work bench installed by the Respondent had not been removed. The fireplace removed by the Respondent had not been re-instated and the kitchen appeared to be in a generally poor condition. There was conflicting evidence from Mr and Mrs Denholm as to the reason for the removal of the fireplace. The Tribunal

accepted that the Applicant had incurred a cost of £3174.00 to replace the kitchen and put it in good order. However, the Tribunal also took account of the fact that at the commencement of the tenancy the kitchen was about eight years old and therefore about half way through its expected life. It therefore did not appear to the Tribunal that it would be reasonable to compensate the Applicant with the whole cost of a new kitchen and therefore determined to award the Applicant one half of the cost of providing the replacement kitchen that being the sum of £1587.00.

89. The Tribunal was satisfied that the Respondent left the property in a less than clean and tidy condition. There were rubbish bags left that the Respondent had undertaken to remove and failed to do so. However, the sum claimed by the Applicant for the removal of the rubbish and the cleaning of the property amounting in total to £795.00 appeared to the Tribunal to be excessive. The Tribunal considered that an award of £200.00 was appropriate in all the circumstances given that the Applicant carried out the work himself.
90. The Tribunal accepted that the property might require quite significant redecoration following the tenancy ending. The Tribunal also noted that the claim by the Applicant was in essence for future costs. In making an award under this head the Tribunal took account of the fact that the Applicant was aware of the Respondent's intended use of the property. It ought to have been apparent to the Applicant that the property might be subject to additional wear and tear as a result of such use and that could have been accounted for either by way of additional rent or deposit but apparently was not. Nonetheless the Tribunal was satisfied that there were elements of damage such as the numerous holes in the walls and poor attempts at decoration that did merit an award under this head of claim and determined that an award of £300.00 was appropriate.
91. The Respondent admitted that no approval had been sought for the erection of the sheds and it follows that they should have been removed at the end of the tenancy. The Tribunal accepted the Applicant's evidence that the sheds could not be easily dismantled and sold and that the cost of removing them in the sum of £140.00 was justified.
92. Although the Tribunal was satisfied that the water pipe may have been damaged during the period of the tenancy it was unable to establish from the evidence that the damage had been caused by the Respondent or someone for whom the Respondent was liable. The Tribunal could not say who had inserted the screw into the water pipe. In any event the Tribunal did not accept that the Applicants claim for the cost of repair was reasonable. The Tribunal was of the view that had the Applicant instructed a qualified plumber

to affect a repair the cost would have been significantly less than that claimed by the Applicant. The Tribunal therefore refused this head of claim.

93. The tenancy agreement is silent on the use of the garden ground. There would on the face of it be nothing to prevent the Respondent from planting a row of trees if they so wished. Equally as it is the Applicant's property, he is free to remove them but the Tribunal was not satisfied that the Applicant could legitimately claim for his labour cost in doing so and therefore was not persuaded to uphold this head of claim.

94. It was perhaps unfortunate that the Applicant failed to lodge the Respondent's deposit in an approved scheme and of course by failing to do so he left himself open to a claim by the Respondent under the Tenancy Deposit Scheme (Scotland) Regulation 2011. However, for the purposes of the current application the oversight on the part of the Applicant is irrelevant. Having carefully considered all the written representations, oral evidence and the oral submissions the Tribunal is satisfied that the awards made under the various heads of claim of the amended application are appropriate in all the circumstances.

### **Decision**

95. The Tribunal finds the Applicant entitled to payment by the Respondent in the sum of £2227.00.

### **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.**

**Graham Harding  
Legal Member/Chair**

**19 May 2021  
Date**

