



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/1506 and FTS/HPC/CV/20/1852

Re: Property at 12 Bellfield View, Kingswells, Aberdeen, AB15 8PG (“the Property”)

Parties:

Miss Ashleigh Lancaster, Mr Jonathan Wiggins, 19 Deer Park Grove, Countesswells, Aberdeen, AB15 8FT; 53 Westhill Grange, Westhill, Aberdeenshire, AB32 6QJ (“the Applicants”)

Ms Rachel Santos, 24 Falcon Wood Close, Manchester, M28 1FG (“the Respondent”)

Tribunal Members:

Ruth O'Hare (Legal Member) and Elizabeth Williams (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make the following orders:-

- (i) In respect of application FTS/HPC/CV/20/1506 an order in the sum of Two hundred and fifty six pounds and twenty one pence (£256.21) in favour of Miss Ashleigh Lancaster and Mr Jonathan Wiggins against Ms Rachel Santos; and**
- (ii) In respect of application FTS/HPC/CV/20/1852 an order in the sum of Four hundred and eighteen pounds and seventy nine pence (£418.79) in favour of Ms Rachel Santos against Miss Ashleigh Lancaster and Mr Jonathan Wiggins.**

Background

- 1 By application to the Tribunal the Applicants sought an order against the Respondent in the sum of £675, being their tenancy deposit which they alleged had been withheld by the Respondent without just cause.
- 2 By Notice of Acceptance of Application a Legal Member with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned for 7 October 2020 and the application paperwork was served upon the Respondent by Sheriff Officers.
- 3 The Respondent submitted a written response to the application in terms of which she disputed that the Applicants were entitled to the return of the deposit and listing various costs which she stated the Applicants were liable for under the terms of the tenancy agreement between the parties.
- 4 The Case Management Discussion took place on 7 October 2020. The Tribunal noted the issue to be resolved between the parties to be what sum, if any, was the Respondent entitled to retain from the deposit. On that basis the Tribunal determined to fix a hearing. The Respondent advised that she intended on submitting a separate application to recover her costs which exceeded the deposit amount. The Tribunal subsequently received an application from the Respondent in this regard seeking the sum of £1864.26 from the Applicants which proceeds under case reference FTS/HPC/CV/20/1852.
- 5 On the basis that the matters to be determined by the Tribunal in application FTS/HPC/CV/20/1852 were substantially the same as those to be determined in application FTS/HPC/CV/20/1506 the applications were conjoined and set down for a hearing on 28th October 2020. The applications were dealt with concurrently at the hearing and have therefore been dealt with similarly in respect of this decision.

Issues to be Resolved

- 6 The issues to be resolved by the Tribunal were:-
 - (i) Whether the Applicants failed to comply with their obligations under the terms of the Tenancy Agreement between the parties in respect of the condition of the property both during and at the termination of the tenancy; and
 - (ii) In the event of any failure to comply, what sums, if any, are due by the Applicants to the Respondent.

The Hearing

- 7 The hearing took place over two days on 28 October 2020 and 4 December 2020. Due to the restrictions imposed by the Covid-19 pandemic the hearing

took place by teleconference. The Applicants and the Respondent were all in attendance.

- 8 The Respondent gave evidence herself. Two witnesses whom she had identified in advance of the hearing, namely Edina Forbes and Morvern Maciver were both unavailable however they had produced statements in advance of the hearing and the Respondent was content to proceed on the basis of those statements.
- 9 The Applicants both gave evidence. They also led evidence regarding the condition of the windows at the conclusion of the tenancy from Mr Trevor Wiggins, the father of Mr Jonathan Wiggins. Another witness whom they had identified in advance of the hearing, namely Mrs Jean Craig, was unavailable however the Applicants were content to proceed in her absence.
- 10 The Tribunal had before it extensive documentary evidence lodged on behalf of both parties. From the Respondent this included, amongst other documents, a copy of the check-in and checkout inventories, with photographs of the property at both the commencement of the tenancy and following the Applicants' departure, invoices and quotations for costs claims and copy correspondence in the form of emails and texts. From the Applicants this included, amongst other documents, quotations for costs, copy correspondence and photographs.
- 11 Both the Applicants and the Respondent gave a comprehensive account of their position, with reference to documents where relevant, and were given the opportunity to challenge each others evidence at appropriate points during the hearing. Their evidence, where relevant and material, can be summarised as follows:-

12 **Ms Rachel Santos**

Ms Santos gave her evidence first and took the Tribunal through the list of costs she was claiming from the Applicants, which amounted to £1864.26.

- 13 In respect of the sum claimed for maintenance works to the garden and communal parts, she noted that these costs had been agreed by the Applicants and were not in dispute.
- 14 Ms Santos explained that the property had been fully painted and cleaned before the tenants had moved in. She referred to the check in and check out inventory which showed the comparison between the condition of the property at the start of the tenancy and following the Applicants' departure. She pointed out two marks on the kitchen wall which appeared to be caused by grease and food spillage. The marks were excessive, going beyond fair wear and tear and the Applicants should therefore be charged for the costs. Ms Santos pointed to chips on two radiators which had to be painted, a chip on an internal door and a chip in the lounge flooring. The radiators and door were approximately eight years old and had been installed when the property was built in 2012. Again, the damage was excessive and went beyond fair wear and tear. The Tribunal

noted that there appeared to be a chip on the door in the check-in photos and queried whether the damage could have been present at that time? Ms Santos explained that there had been a small chip but it had gotten much worse during the Applicants' tenancy. There had been damage to wallpaper in the bedroom with marks, rips and scuffs, therefore the wallpaper required to be replaced on one wall. Ms Santos referred to an internet print out which showed the cost of the wallpaper roll to be £75 and to a quotation from R Davidson for the total redecoration works, which amounted to £700 plus VAT which is the sum she was seeking.

- 15 Ms Santos went on to refer to damage to light fittings which had been caused by Ms Lancaster when she tried to replace the bulb. Ms Santos had tried to assist her by emailing her a link to a video showing how the bulbs should be replaced. However the fitting had been broken through excessive force and Ms Santos had to arrange for an electrician to attend the property to fix it. At the same time she had to ask the electrician to check the extractor fan. He had found it to be switched off. This must have been done deliberately by the tenants, perhaps due to noise. Ms Santos was therefore seeking the electrician's costs in the sum of £175.75. She did not request these costs from the tenants when the sums were incurred in January 2020. She was overwhelmed at the time as she was being bombarded by the tenants with correspondence about various issues at the property.
- 16 Ms Santos explained that she was seeking the sum of £58.80 in respect of costs incurred in cleaning the oven at the termination of the tenancy. It was not in a reasonably clean condition. The Tribunal noted that this sum was not disputed by Ms Lancaster and Mr Wiggins.
- 17 Ms Santos explained that two wineglasses and a ceramic bowl were missing from the property at the end of the tenancy. She had obtained quotes for a like for like replacement which amounted to £19.98 for the glasses and £10.98 for the bowl. The quote was high because she had to replace single items, rather than purchasing a set. Also the items were of a high quality.
- 18 Ms Santos confirmed that she was seeking the sum of £120 for repairs to a kitchen unit drawer and a drawer in the bedroom. The fittings had been broken through excessive force. She had obtained several quotations from a joiner for the works however it had been difficult to progress this during lockdown. The work was still outstanding. Both units were approximately six years old. The kitchen was custom made for the property and the drawers in the bedroom were bought when she herself had originally moved into the property. Ms Santos queried the quote that had been produced by Mr Wiggins and Ms Lancaster for the work. It didn't include materials which would be required to effect the repair.
- 19 Ms Santos advised that she was seeking £35.99 for a replacement cutlery tray. The existing tray had been damaged, with puncture holes which were not present when the tenancy commenced. The quote of £1.99 that Mr Wiggins and Ms Lancaster had produced to support their application was not

appropriate as the tray was not the correct size. The kitchen was bespoke and a specific tray was required that would need to be fitted. Ms Santos confirmed that she hadn't removed cutlery to check the condition of the tray when the check in inventory was carried out. However the tenants would have had fourteen days to check the condition of the property including the cutlery tray when they moved in. It was therefore assumed that the cutlery tray was in a good condition. Ms Santos was also seeking £65 in respect of damage to the frame of a kitchen drawer, which had a large dent of around two inches. The costs she was seeking reflected the reduction in the lifespan of the drawer, she did not intend on replacing it as this would cost hundreds of pounds.

- 20 Ms Santos explained that she was seeking £43.20 for the cost of window cleaning at the end of the tenancy. This was the tenant's responsibility. All internal and external windows required to be cleaned. She had obtained a quote from Goldstar which she referred to. The company had cleaned the property at the commencement of the tenancy, prior to the tenants moving in.
- 21 Ms Santos explained that shortly after the tenants moved in to the property in October 2018, the fridge freezer was written off due to catastrophic failure. Accordingly a new fridge freezer was installed. It was in good working order with no markings and no broken drawers. Spatulas were provided to allow the tenants to defrost freezer safely. However they had failed to do so and had caused significant damage through use of excessive force. There were several gouge marks and the top drawer in the freezer was broken. The drawer front would need replaced, it couldn't be clipped back into place. The cost of a replacement was £134 plus delivery. Ms Santos was also seeking a charge of £50 for the damage caused to the fridge freezer and reduction in lifespan as a result. The total cost, including the said delivery charge, was £204.98.
- 22 Ms Santos had discovered after the tenants had vacated the property that a rug was missing. She made reference to the check in inventory which confirmed the existence of the rug at the start of the tenancy. There had been communication with Ms Lancaster about a year after the tenants had moved into the property. Ms Lancaster had advised that the rug had a bad smell. Ms Santos had therefore agreed that the tenants could store the rug in a bike shed pertaining to the property. She had expected them to return it to the property at the end of the tenancy albeit she had not specifically instructed them to do this. Ms Santos couldn't find the rug anywhere. The rug was around four years old. Ms Santos advised that there were a number of bike sheds and codes were needed to access them. She had not searched all of the bike sheds for the rug but stressed that it should have been returned to the property. However she conceded that it could still be in one of the sheds. She was therefore entitled to a replacement rug at a cost of £128 plus VAT.
- 23 Ms Santos referred to the check out inventory which evidenced the condition of the carpets at the end of the tenancy. They required a thorough clean. Ms Santos was therefore seeking cleaning costs in the sum of £17.50.

- 24 Ms Santos advised that the final items relating to her claim were costs in relation to the tenants' failure to remove all items from the property and a replacement vase. In relation to the former, a number of items had been left in the property including cables, chargers and cleaning products. Ms Santos explained that she lives in Manchester therefore her representative Edina Forbes had attended the property to meet Ms Lancaster at the end of April 2020 and collect the keys. Shortly after Ms Lancaster left, Ms Forbes noted clothing in the second bedroom. She had contacted Ms Lancaster who in turn had contacted Mr Wiggins. Ms Wiggins had attended the property half an hour later and collected the clothing. However there were still some items remaining including cleaning products, chargers and cables. Ms Forbes had spent additional time packing Mr Wiggins' belongings and making them available for collection. Ms Forbes had not charged Ms Santos for doing this however Ms Santos was seeking costs of two hours of her time, as well as the time she herself had spent removing the remaining items. Ms Santos advised that she works full time and has to take time off to attend to these types of matters. She had to travel up from Manchester where she currently resides to do this which incurs travel costs.
- 25 Finally with regard to the damaged vase, Ms Santos made reference to the check in and check out inventory. There was no damage reported in the check in inventory therefore the vase must have been chipped at some point during the tenancy. The vase was approximately four years old and the quote provided was for a like for like replacement in the sum of £43.98.

Mr Jonathan Wiggins and Ms Ashleigh Lancaster

- 26 Mr Wiggins and Ms Lancaster each gave evidence in respect of the items listed by Ms Santos. With regard to the redecoration element, they both explained that the redecoration required to the property was clearly fair wear and tear. The radiators and the door were eight years old. It was inevitable that they would suffer some minor damage. Ms Lancaster explained that they had used all of the radiators in the house to finish drying off clothes from time to time, not just the two Ms Santos had referred to, therefore she disputed that there had been any deliberate attempt to damage the radiators in question. Ms Lancaster explained that they had noticed the chip in the flooring about fourteen months into the tenancy. They didn't think it was worth reporting to the landlord as it was of a minor nature. She pointed to the heavy bar stools in the living area, which could have easily caused the damage. It was accidental fair wear and tear. In respect of the wallpaper, Mr Wiggins explained that they had moved their own bed into the property, which had covered a larger surface area on the bedroom wall. Again their position was that any damage was down to fair wear and tear.
- 27 In response to questions from the Tribunal, Mr Wiggins and Ms Lancaster accepted that the depiction of the property in the check in and check out inventories were likely accurate. However they disagreed with the assessment by Ms Santos of the damage she was claiming for. In their view it was all a result of fair wear and tear, not wilful damage or neglect.

- 28 With regard to the light fittings, Ms Lancaster explained that there had been an issue with the spotlights which was reported to Ms Santos in January 2020. The glass had cracked due to heat. Around that time, a joiner had come out to attend to another issue at the property and had attempted to change the bulb. However he was unable to do so and had advised that an electrician would be required. Ms Santos had sent the video instructions and had asked Ms Lancaster to change the bulb however she too was unable to do so. Mr Wiggins explained that an electrician was required due to the nature of the bulbs, the tenants should not have been expected to do it. With regard to the extractor fan, Mr Wiggins explained that the previous tenant had told them that he had switched it off. Neither Ms Lancaster nor Mr Wiggins knew where the switch was. As far as they were aware, the extractor fan was switched on, it just wasn't working correctly.
- 29 With regard to the wine glasses and ceramic bowl, Mr Wiggins and Ms Lancaster both conceded that these items were missing and should be replaced. Mr Wiggins explained that he had the bowl and would be willing to return this to Ms Santos, together with two new wine glasses. He considered the costs sought by Ms Santos for these items to be excessive. Ms Lancaster concurred with this position.
- 30 With regard to the drawer units in the kitchen and bedroom, Mr Wiggins explained that this was an easy repair and the quote of £120 from Ms Santos was excessive. The drawer fittings could easily clip back in. Any damage was a result of fair wear and tear, it had not been caused on purpose. He noted that the sides of the drawer unit in the bedroom were already worn when they moved into the property. They had stored clothes in the unit but had not caused any intentional damage. The quote that he and Ms Lancaster had obtained in the sum of £20 was reasonable. Ms Lancaster concurred with this position and explained that the quote had been obtained from a joiner.
- 31 With regard to the cutlery tray, Mr Wiggins stated that the damage could have been present when they moved into the property. They would not have pulled out the drawer to check whether the tray was damaged. Notwithstanding the cost quoted by Ms Santos was excessive. He referred to the quote he had produced with the application in the sum of £1.99. Ms Lancaster explained that any damage was a result of fair wear and tear. It had not been caused by them on purpose. With regard to the dent in the kitchen drawer frame, Mr Wiggins advised that they would not have been able to see the back of the drawer and did not know it was damaged. The costs sought by Ms Santos were excessive. Ms Lancaster stated any damage was again a result of fair wear and tear.
- 32 With regard to the windows, Mr Wiggins confirmed that they were cleaned by himself and his father, and by Ms Lancaster and her grandmother inside and out at the end of the tenancy, with the exception of the upper windows externally. Ms Lancaster confirmed this to be the case. The windows were last cleaned on the 29th April 2020. The check out inventory was carried out on the 8th May 2020 therefore there would have been an effect on the cleanliness of the external windows by any adverse weather in the interim period.

- 33 With regard to the fridge freezer, Mr Wiggins confirmed that there had been problems which had resulted in the freezer being replaced. The door that Ms Santos said was broken could simply be clicked back into place. The door had been attached when they vacated the property. They would remove it to defrost the freezer but reattach it thereafter. Ms Lancaster confirmed her agreement with Mr Wiggins. They had used the proper defrosting utensil to defrost the freezer. She accepted there were marks but they had not been caused deliberately.
- 34 With regard to the rug Ms Lancaster confirmed that she had reported a problem with the rug to Ms Santos in relation to a strong smell. Ms Santos had agreed that the rug could be stored in the bike shed. Ms Lancaster had put the rug in bike shed E which was the one she had been given the code for. As far as she was aware it was still there. When she had placed the rug in the shed the lock was in full working order therefore it was secure. At the end of the tenancy Ms Lancaster couldn't gain access to the bikeshed due to a change in the code therefore couldn't retrieve the rug. In any event Ms Santos had consented to keeping the rug in the shed therefore Ms Lancaster did not think there was a strict requirement to return it to the property. Mr Wiggins confirmed that was his understanding of the position.
- 35 In relation to the condition of the carpets, Mr Wiggins advised that these had been cleaned at the end of the tenancy by himself and his father using a Vax machine. They were in a good condition. Ms Lancaster confirmed this to be the case. The photos in the check out inventory clearly showed the carpets to be in a clean condition, with just a couple specks of fluff.
- 36 In relation to the charge for removing items from the property, Mr Wiggins confirmed that Ms Lancaster had attended the property to meet Edina Forbes and hand over the keys. She had contacted him to say that some of his belongings were still in the tenancy and that Ms Forbes would wait for a bit longer so that he could collect these. He had attended within half an hour and had collected his things. It was just some cleaning products that had been left behind. He had seen them but they were not his so he had not removed them. He didn't think any charge was due. Ms Lancaster confirmed this to be her understanding of what had transpired and the extent of her involvement. As far as she was aware there were only a few items remaining in the property that could have been disposed of easily.
- 37 Finally in relation to the replacement vase, Mr Wiggins stated that both he and Ms Lancaster were aware that the vase had been chipped however they had provided a quote for a like for like replacement in the sum of £6.98. The sum sought by Ms Santos was excessive. Ms Lancaster confirmed this to be her position.

Mr Trevor Wiggins

- 38 Mr Trevor Wiggins gave evidence on the condition of the property at the end of the tenancy. He confirmed that he had attended the property with Mr Jonathan Wiggins. He had taken his own Vax carpet washer and had cleaned the stair carpet and the landing carpet. The carpets had been shampooed. He had also assisted with cleaning the internal and external windows. The property was left in a clean condition.
- 39 The Hearing concluded and the Tribunal confirmed it would issue its decision in due course. Following the hearing, the Tribunal received confirmation from Ms Santos that the two wine glasses and the bowl had been returned to her by post.

Findings in Fact and Law

Having considered the evidence the Tribunal made the following findings in fact and law:-

- 40 The Applicants and Respondent entered into a Tenancy Agreement in respect of the property dated 11 October 2018 which commenced on 15 October 2018
- 41 In terms of Clause 16 of the said Tenancy Agreement the Applicants undertook to keep the property in the same condition as it was as at the date of entry for the duration of the tenancy.
- 42 In terms of Clause 17 of the said Tenancy Agreement the Applicants agreed to be liable for the cost of any repairs where the need for them is attributable to their fault or negligence.
- 43 In terms of Clause 17 of the said Tenancy Agreement the Respondent undertook to maintain any fixtures or fittings in a reasonable state of repair and proper working order.
- 44 The tenancy between the parties terminated on 30 April 2020.
- 45 Following the termination of the tenancy, the Respondent required to undertake maintenance works to the garden and communal parts as a result of the Applicants' failure to comply with their obligation to maintain these areas in a reasonable and tidy condition.
- 46 The Respondent is entitled to the sum of £60 in respect of said garden and communal maintenance works under the terms of the said Tenancy Agreement.
- 47 The internal decoration works in respect of the marks on the wall, door and door frame, floorboard and two radiators are a result of fair wear and tear and the costs incurred by the Respondent in respect of these works are therefore not due by the Applicants under the terms of the said Tenancy Agreement.
- 48 Following the termination of the tenancy the Respondent required to replace wallpaper in the bedroom as a result of the Applicants' negligence.

- 49 It is reasonable to conclude that the wallpaper was damaged by the Applicants' bed which had replaced the existing bed in the property.
- 50 The property was newly decorated prior to the commencement of the Applicant's tenancy in October 2018.
- 51 The Respondent is entitled to the sum of £75 in respect of the cost of the replacement wallpaper.
- 52 The costs claimed by the Respondent in arranging for an electrician to attend the property to repair and replace the spotlights are not due by the Applicants under the terms of the said Tenancy Agreement, being work for which the Respondent is responsible for under Clause 17 of the Tenancy Agreement.
- 53 The Applicants did not intentionally switch off the extractor fan in the kitchen.
- 54 The costs claimed by the Respondent in arranging for an electrician to inspect the extractor fan are not due by the Applicants under the terms of the said Tenancy Agreement.
- 55 Following the termination of the tenancy, the Respondent required to clean the oven as a result of the Applicants' failure to reinstate it to a reasonable and clean condition.
- 56 The Respondent is entitled to the sum of £58.80 in respect of the cleaning of the oven under the terms of the said Tenancy Agreement.
- 57 Following the termination of the tenancy, a bowl and two wine glasses were missing from the property.
- 58 The bowl and two wine glasses have now been returned to the Respondent.
- 59 Following the termination of the tenancy the Respondent required to repair a drawer in a kitchen unit as a result of the Applicant's failure to comply with their obligations under the said Tenancy Agreement.
- 60 It is reasonable to expect a kitchen to have a lifespan of ten years.
- 61 The kitchen in the property is approximately eight years old.
- 62 The Respondent is therefore entitled to the sum of £40 in respect of the costs incurred in carrying out the repair.
- 63 The repair of the drawer in the master bedroom was a result of fair wear and tear.

- 64 The costs claimed by the Respondent in carrying out the repair to the drawer in the master bedroom are therefore not due by the Applicants under the terms of the said Tenancy Agreement.
- 65 It cannot be reasonably concluded on the balance of probabilities that the damage caused to the cutlery drawer occurred during the Applicants' tenancy.
- 66 The costs claimed by the Respondent in replacing the drawer are therefore not due by the Applicants under the terms of the said Tenancy Agreement.
- 67 It cannot be reasonably concluded on the balance of probabilities that the damage caused to the drawer frame in the kitchen unit occurred during the Applicants' tenancy.
- 68 The costs claimed by the Respondent in respect of the damage to the drawer frame in the kitchen unit are therefore not due by the Applicants under the terms of the said Tenancy Agreement.
- 69 Following the termination of the tenancy the Respondent required to carry out external cleaning to the upstairs windows at the property due to the Applicants failure to leave the windows in a reasonable and clean condition.
- 70 The Respondent is therefore entitled to the sum of £20 in respect of external cleaning to the upstairs window under the terms of the said Tenancy Agreement.
- 71 Following the termination of the tenancy the Respondent required to replace a drawer in the freezer due to the Applicants' neglect.
- 72 The freezer was approximately a year old.
- 73 It is reasonable to expect a freezer to have a lifespan of ten years.
- 74 The Respondent is therefore entitled to the sum of £134.99 in respect of the replacement freezer drawer.
- 75 In October 2019 the Respondent agreed that a rug within the property could be stored in an external bike shed by the Applicants.
- 76 The Respondent did not instruct the Applicants to return the rug to the property at the termination of the tenancy.
- 77 The Respondent has not carried out a thorough search for the rug by accessing the bike sheds.
- 78 The costs of replacing the rug is therefore not due by the Applicants under the terms of the said Tenancy Agreement.

- 79 Following the termination of the tenancy, the carpets in the property were left in a reasonable and clean condition by the Applicants in compliance with their obligations under the said Tenancy Agreement.
- 80 The Respondent is not therefore entitled to the costs of cleaning the carpets.
- 81 On or around 30 April 2020 Ms Lancaster attended the property to hand keys back to the Respondent's Representative Edina Forbes.
- 82 It was highlighted to Ms Lancaster by Edina Forbes that some items belonging to Mr Wiggins were still in the property.
- 83 Ms Lancaster contacted Mr Wiggins who attended the property promptly to collect the items.
- 84 Mrs Forbes did not charge the Respondent for her attendance at the property.
- 85 Following the termination of the tenancy there were minor items remaining in the property including cleaning products, cables and chargers.
- 86 The Respondent disposed of these items and did not incur any charge in doing so.
- 87 The Respondent is not entitled to any sum in respect of the disposal of the items under the tenancy agreement between the parties.
- 88 Following the termination of the tenancy a large purple vase was noted to be damaged.
- 89 The vase was approximately six years old.
- 90 It is reasonable to expect a vase to have a lifespan of ten years.
- 91 The Respondent is therefore entitled to the sum of £10 towards the replacement of the vase.
- 92 The Respondent is therefore entitled to the sum of £418.79 in terms of the Tenancy Agreement between the parties.
- 93 The Applicants are therefore entitled to the sum of £256.21 being the deposit paid subject to deduction of the Respondent's costs.

Reasons for Decision

- 94 The Tribunal determined the application having considered the extensive documentary evidence and the evidence from the parties and witness at the Hearing. The Tribunal was satisfied that it had sufficient information upon which

to make a decision on the application. It was clear that the substantive facts of the matter were broadly agreed between the parties. What was in dispute were the inferences were to be drawn from the documents and photographs before the Tribunal. In determining the application the Tribunal has also reflected in any costs awarded the betterment principle in that the landlord cannot be financially or materially better off at the end of the tenancy.

- 95 Ultimately and based on its findings in fact the Tribunal was satisfied that the Respondent was entitled to the sum of £418.79 in respect of costs that the Applicants were liable for under the terms of the Tenancy Agreement between the parties. On that basis the Applicants were entitled to return of their deposit subject to deduction of that sum.
- 96 The Tribunal concluded that there was a significant element of fair wear and tear in the damage the Respondent had evidenced in relation to the marks on the wall, the chips in the door, floor and the radiators and the drawer in the bedroom. The Tribunal did not agree with the Respondent's assessment of the damage in relation to these items, namely that it was excessive. It appeared to the Tribunal that said damage was largely of a minor nature and some of the costs sought by the Respondent had arisen from tasks which would be reasonably expected of any landlord in the course of business of letting property. This was also of relevance to the sums sought by the Respondent in relation to the removal of items at the end of the tenancy which did not in the view of the Tribunal merit any award of costs. Similarly the Tribunal did not accept that the condition of the carpet as evidenced in the check out inventory would have required extensive cleaning. The Tribunal accepted the Applicants evidence that they had carried out a thorough clean using a Vax cleaner and the carpet was in a reasonable and clean state when they had departed the property. This was evident from the photographic evidence produced by the Respondent.
- 97 The Tribunal also found it difficult to attribute liability to the Applicants in respect of the cutlery tray and the dent in the kitchen unit drawer frame on the basis that the evidence produced by the Respondent in terms of the check in and check out inventories did not unequivocally conclude that the damage occurred during the tenancy. The Respondent herself had conceded that she would not have moved cutlery to check the tray at the commencement of the tenancy and the Tribunal did not accept that the onus was on the Applicants to find the damage and report it within the timescales for agreeing the inventory.
- 98 The Tribunal was however satisfied that the damage to the wallpaper was likely a result of the Applicants having not taken due care when moving their own bed into the property and on that basis the Tribunal was content that the Respondent was entitled to the costs for replacing the wallpaper. Similarly the Tribunal was satisfied that a sum in relation to repairing the kitchen unit drawer fitting was justified having regard to the nature of the damage and the Applicants acceptance that some payment was due. The Tribunal accepted the quote provided by the Respondent in the sum of £120 however taking into account the age and lifespan of the kitchen, which had been installed when the

property was built in 2012, determined that the sum of £40 towards those costs would be reasonable.

- 99 The Tribunal was not persuaded that the Applicants were liable for the cost of replacing the light fittings, on the basis that the nature of the fittings were such that these should have been attended to by an electrician in the first instance as opposed to Ms Lancaster attempting the task herself on the instruction of the Respondent. Accordingly the Tribunal could not attribute fault to the Applicants for the damage that had subsequently been remedied by a professional. It appeared to the Tribunal that this was a matter for which the landlord would be responsible under their Repairing Standard duties. Similarly the Tribunal was not persuaded that the Applicants had deliberately switched off the extractor fan and should therefore be liable for any costs associated with rectifying this issue.
- 100 The Tribunal was satisfied that the Respondent was entitled to partial costs in respect of the chipped vase, having been satisfied that the damage went beyond fair wear and tear and had occurred during the tenancy. Taking into account the age of the item and depreciation the Tribunal considers a reasonable charge to be £10 towards the cost of a replacement.
- 101 The Tribunal concluded in relation to the cleaning costs for the windows that some cleaning would have been required in relation to the upstairs windows which had not been attended to by the Applicants. Accordingly whilst the Tribunal accepted that the Applicants had cleaned the internal and lower external windows, it considered that a sum of £20 would be reasonable in respect of the upper external windows.
- 102 In relation to the freezer drawer, the Tribunal was satisfied that the damage went beyond fair wear and tear and could be attributed to the neglect of the Applicants on the basis that it could be reasonably assumed they had failed to take due care in their use of the appliance. Having regard to the age of the freezer the Tribunal was satisfied that the Respondent was entitled to the full cost of replacing the freezer door as evidenced by the quotation produced by her in the sum of £134.49. The Tribunal did not however consider that any additional sums were due on the basis of the evidence produced.
- 103 Finally with regard to the rug the Tribunal concluded that the Respondent was not entitled to the cost of replacing that item. The Respondent had clearly agreed to the storage of the rug in the bike shed and the Applicants were entitled to assume that this would remain the position at the end of the tenancy. Furthermore the Respondent had conceded in her evidence that she had not carried out a thorough search of the bike sheds in an attempt to locate the rug. Accordingly the Tribunal could not attribute any liability to the Applicants for the replacement of this item.
- 104 The decision of the Tribunal was unanimous.

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.

R O'Hare

31 December 2020

Legal Member/Chair

Date