



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

**Chamber Ref: FTS/HPC/CV/20/2563**

**Re: Property at 28 Cormack Park, Rothienorman, AB51 8GL (“the Property”)**

**Parties:**

**Mr Alan Robertson, 9 Redwell Drive, Whitehills, Banff, AB45 2RG (“the Applicant”)**

**Ms Morven Hutchison, present whereabouts unknown (“the Respondent”)**

**Tribunal Members:**

**Ms. Susanne L. M. Tanner Q.C. (Legal Member)**

**Mr. Ahsan Khan (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondent should pay to the Applicants the sum of FOUR THOUSAND SIX HUNDRED AND FIFTY POUNDS (£4650.00) STERLING; and made an Order for Payment in respect of the said sum.**

**Procedural background**

1. On 19 November 2020, the Applicant made an application to the tribunal under Section 16 of the Housing (Scotland) Act 2014 (“the 2014 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”).

2. The Applicant seeks a payment order in the sum of £4,650.00 in respect of rent arrears and damage to the Property.
3. The Applicant lodged:
  - 3.1. The private residential tenancy agreement'
  - 3.2. An Inventory;
  - 3.3. A selection of images (before and after);
  - 3.4. Invoice for repairs; and
  - 3.5. Selection of communications with tenant relating to rent;
  - 3.6. Invoice from PPG (Property) Limited dated 3 August 2020.
4. The tribunal requested further information from the Applicant, namely (1) a rent statement an (2) consent from the co-proprietor of the Property to the Application, both of which were produced by the Applicant.
5. On 20 January 2021, the Application was accepted for determination.
6. A CMD teleconference was fixed for 25 March 2021 at 1400h by teleconference and both parties were notified of the date, time and joining details. The notification was successfully served upon the Respondent by advertisement on the Chamber's website.

**Case Management Discussion: 25 March 2021 at 1400h (teleconference)**

7. The Applicant attended.
8. The Respondent did not attend. The tribunal chair was satisfied that the requirements of rule 24(1) of the 2017 Rules 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 all the material before it.
9. The Applicant stated that there were two separate parts of the claim (1) rent arrears and (2) remedial works. He stated that the start date of the tenancy was 25 October 2019 and the end date of the tenancy was 25 July 2020. The final end of tenancy inspection was carried out by him on 25 July 2020. He stated that that date was the first time that he realised that the Respondent had disappeared. He stated that she had been in arrears for some time before that. The arrears started after the first month the Respondent moved in. He knew that she was getting Universal Credit. They spoke about getting it paid straight to the Applicant. Then the Respondent made two months of payments and he thought that that was fine, although she still had an amount to make up payment for. Then the rent stopped

again. He stated that the property is on his route home from work and that he had been stopping in at the end of every month to try to speak to her. He stated that the Respondent stopped taking his phone calls after having been full of promises that the money was coming. After a period of time when there was no communication at all he passed the Property and realised that she was not there. It is an unfurnished let and he saw that it was empty of all items of furniture and belongings.

10. The Applicant stated that he is taking the date of 25 July 2020 as the end of the tenancy. He stated that he had found the Respondent on Facebook after she had done her disappearing act and contacted her to ask for payment of rent but she quickly disappeared from there. Then he paid someone to try to find her. They found her at a property but by the time he submitted the application she had moved on again. He has not seen or heard from her since then.

### **Rent arrears**

11. The Applicant seeks rent arrears of £3750.00 to 25 July 2020, as evidenced by the private residential tenancy agreement and rent statement which has been produced.

### **Remedial works**

12. The Applicant seeks £900.00 for remedial work which he stated needed to be done at the end of the tenancy. He stated that there was cleaning of the carpets and woodwork which needed to be washed down. He stated that a deep clean of the property was required, especially the kitchen area. He stated that the place had to be repainted throughout, with costs for materials and time for that. He stated that a tidy up of the garden was required as a lot of waste had been left in the garden that needed to be cleared and taken to the skip.
13. He stated that no deposit had been taken from the tenant. He worked on the principle that he did not need a deposit.
14. The Applicant stated that he had not considered which sections of the tenancy agreement entitled him to make each of the claims for remedial work. He stated that he would consider the document and confirm his position.
15. The Applicant referred to the invoice from PPG which had been lodged. It shows heads for: (a) Cleaning Carpets and woodwork £75 (b) Deep clean of the property, especially kitchen area £100 (c) redecoration throughout, including all materials £600 and (d) garden tidy and removal of all waste materials £125.

16. The Applicant had lodged seven photographs, four of which were pre-tenancy on 21 September 2019 and three of which were taken post-tenancy on 25 July 2020 (they were un-numbered / undated).

**(a) Carpets**

17. In relation to the carpets the Applicant stated that they were new or reasonably new just before the Respondent moved in. He stated that everything was in good condition as per the inventory.

18. He referred to two of the representative pictures to show that it was clean at the start and not clean at the end. The photographs produced included images of one room before and after the tenancy in which the carpet could be seen. He stated that additional photographs were available.

**(b) Deep Clean of the property**

19. The Applicant stated that the Property was spotless when she moved in and filthy when she moved out. He referred to the inventory and the representative photographs. He stated that additional photographs were available.

**(c) Painting throughout**

20. The Applicant stated that the Property was freshly painted before she moved in, following a previous tenancy. He stated that when he got it back there was no way it could be cleaned. She had been in there for 8 months. He does not think that it is unreasonable for her to make good. He stated that there was damage in every room of the property. He stated that the kitchen had grease on the walls and that the bedroom walls were scored and marked.

21. The Applicant accepted that only one photograph in the seven produced appeared to show scuff marks on a wall, to the left of the front door in the hall. There was no corresponding photograph of the areas pre-tenancy but the inventory recorded that the walls were in good condition. He stated that there is no end of tenancy inventory checkout report. He did not do a report as she was not there to give it to. He stated that he has taken photographs and given a note of everything found with his Application.

22. The Applicant stated that he has more photos that he can produce post tenancy that show that there is damage there. He stated that they will show that it was not left in a reasonable state.

23. The tribunal chair stated that he should consider providing comparator evidence of the condition at the start of the tenancy, to be considered alongside the written record in the inventory. The Applicant confirmed that he can give more evidence. The tribunal chair asked that any additional evidence be lodged in a numbered bundle with an accompanying List of Documents.

#### **(d) Garden**

24. The Applicant stated that the garden was in a reasonable condition at the start of the tenancy and that there were items of rubbish which required to be cleared at the end. No photographs had been produced of the garden in the seven produced. The invoice from PPG (Property) included a cost of £125 for 5 hours tidying and removal of waste materials.

#### **Further procedure**

25. A hearing was fixed to consider the evidence the Applicant wished to lead and submissions he wished to make in support of his claim for the costs of carpet cleaning, deep cleaning, redecoration costs and garden clearance. The Applicant stated that he would consider which parts of the tenancy agreement he was relying upon in relation to the claims for remedial works.

26. A hearing was fixed for Thursday 13 May 2021 at 1000h by teleconference.

27. The date, time and arrangements for the hearing were notified to the Applicant at the CMD and by email and notified to the Respondent via Service by Advertisement on the tribunal's website.

#### **Documents**

28. Prior to the hearing, the Applicant lodged a List of Documents with an accompanying numbered bundle of documents containing additional photographs.

29. Prior to the hearing, the Applicant lodged written submissions stating that the claim against the Respondent is based on unpaid rent and a failure of the Respondent to comply with sections 24 and 28 with respect to the condition the Property was left in, including the garden grounds.

**Hearing: 13 May 2021, 1000h, teleconference**

30. The Applicant attended.
31. The Respondent did not attend. The tribunal chair was satisfied that the requirements of rule 24(1) of the 2017 Rules 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 all the material before it.
32. The Applicant adopted his submissions made at the CMD and referred to his additional written submissions, the documents lodged with the Application and the additional bundle of documents lodged.
33. The tribunal chair asked about the deposit of £600 which was referred to in the tenancy agreement as this was not reflected as a deduction from the amount claimed in the Application or on the rent statement which was produced. The Applicant stated that there was no deposit paid by the Respondent as she was unable to do so due to her personal circumstances. An agreement was reached to vary the terms of the tenancy agreement but the written agreement itself was not amended to reflect that.
34. In relation to the remedial works claim, the Applicant referred to the additional photographs lodged in support of the claim.
35. In respect of the carpet cleaning claim, the Applicant referred to images which showed the condition of the carpets at the start and at the end of the tenancy. There are carpets in the lounge and two bedrooms. At the start of the tenancy the carpets were clean and free from refuse. At the end of the tenancy they were left with large areas of dirty marks and refuse lying on the floor.
36. In respect of the redecoration of the property, the Applicant referred to a number of images which showed the condition of the walls at the start and the end of the tenancy. The Applicant stated that the Property was redecorated and freshly painted prior to the tenant moving in. He stated that that was shown in the images. He stated that the tenant was in for 8 or 9 months. He appreciates that there is fair wear and tear to take into account but he believes the claim to be justified. At the end of the tenancy, the walls were grubby in the bedrooms, the hall, the lounge and the kitchen. He referred the tribunal to a selection of images showing the condition of the walls at the end of the tenancy. Most of the images showed dirty marks but one of them showed a paint mark on a wall which looked like a tester pot had been used on the wall. The Applicant stated that as a result of the damage, the decorator required to paint the entire flat. The Applicant confirmed, in response to a question from the ordinary member, that he tried to clean the surfaces and felt

that they were beyond cleaning. Everything was washed down to see if it was just dirty marks. He stated that the Respondent had no permission for pets and there was a lot of markings from dogs on the walls. The redecoration which was carried out was emulsion throughout. They did not do the woodwork. The Applicant explained that he has other properties and PPG are local and give him good rates. They do general work for him so it makes sense to use them without having to go round three or four people for quotations. He knows generally the kind of rates that people charge and thinks that the rates charged by PPG were reasonable.

37. In relation to the garden claim, the Applicant stated that it was handed over in a reasonable condition and was not left in a reasonable condition. The garden at the end of the tenancy is shown in photographs 55 and 56. The grass needed to be cut and the garden needed to be weeded, with weedkiller put down. He stated that the grass was actually very long and they had to get someone to strim it first and move all the cut grass and then do a couple of cuts with the lawnmower. He submitted that the time and cost was justified.

38. The tribunal adjourned to consider its decision.

### **39. Findings-in-Fact**

39.1. The Applicant is the joint registered proprietor of the Property.

39.2. The Applicant and Respondent entered into a Private Residential Tenancy agreement in respect of the Property on 26 October 2019.

39.3. The start date of the tenancy was 25 October 2019.

39.4. Rent was payable at the rate of £600.00 per calendar month, to be paid in advance on 25<sup>th</sup> of each month.

39.5. No deposit was paid by the Applicant to the Respondent at or about the start of the tenancy following an agreement being reached between the parties so the terms of the written tenancy agreement were varied in this respect.

39.6. In signing the tenancy agreement, the Respondent agreed that the signed inventory which was supplied to her was a full and accurate record of the contents and condition of the Property at the start of the tenancy and she agreed to replace or repair (or at the option of the Landlord to pay the reasonable cost of repairing or replacing) any of the contents which are destroyed, damaged, removed or lost during the tenancy, fair wear and tear

excepted, where this was caused wilfully or negligently by the Respondent or anyone living with her or an invited visitor; with items to be replaced by items of an equivalent value and quality.

- 39.7. An inventory dated 25 October 2019 was prepared and provided a record of the condition and contents of the Property at the start of the tenancy.
- 39.8. The inventory was provided to the Respondent and she signed the document to acknowledge that it was an accurate record of the condition and contents of the Property as at the start of the tenancy.
- 39.9. The walls in the Property had been freshly decorated throughout prior to the start date of the tenancy.
- 39.10. In signing the tenancy agreement, the Respondent agreed to remove all of her belongings when the tenancy ended.
- 39.11. In signing the tenancy agreement, the Respondent agreed to maintain the garden in a reasonable manner.
- 39.12. Rent arrears accrued during the tenancy.
- 39.13. The Respondent left the Property on an unknown date without giving notice to the Applicant and without providing a forwarding address.
- 39.14. The Applicant discovered that the Property was empty during a routine inspection on 25 July 2020.
- 39.15. The tenancy ended on 25 July 2020.
- 39.16. At the time that the tenancy ended on 25 July 2020, the rent arrears amounted to £3750.00.
- 39.17. The Property was not left by the Respondent in the same condition in which it had been handed over at the start of the tenancy, fair wear and tear excepted.
- 39.18. The Respondent wilfully or negligently caused damage to the Property and garden.
- 39.19. The carpets throughout the Property in the lounge and two bedrooms were dirty and required to be cleaned.



- 39.20. The Property was left in a dirty state, with refuse which required to be removed, in particular in the kitchen.
- 39.21. The walls in various areas were damaged beyond fair wear and tear, with dirty marks, paint marks, scratches and dents.
- 39.22. The garden was not left in a reasonable state as the grass was overgrown and required to be strimmed, cut and weeded.
- 39.23. On 3 August 2020, the Respondent incurred expenses of £75.00 for carpet cleaning.
- 39.24. On 3 August 2020, the Respondent incurred expenses of £100.00 for a four hour deep clean of the Property, in particular in the kitchen.
- 39.25. On 3 August 2020, the Respondent incurred expenses of £600.00 for painting throughout, including all materials.
- 39.26. On 3 August 2020, the Respondent incurred expenses of £125.00 for a garden tidy at the Property.

#### **40. Discussion**

- 40.1. The tribunal was satisfied on the balance of probabilities that the Applicant discovered on 25 July 2020 that the Respondent left the Property on an unknown date, without giving notice or a forwarding address to the Respondent and that the end date of the tenancy was 25 July 2020.
- 40.2. The tribunal was satisfied on the balance of probabilities that as at 25 July 2020 there were £3750.00 rent arrears. The tribunal was satisfied that no deposit had been paid by the Respondent at the start of the tenancy.
- 40.3. The tribunal was satisfied that the Respondent had wilfully or negligently caused damage to the Property and garden, beyond fair wear and tear and that she was liable to the Applicant for the reasonable costs of remedying the same in terms of the tenancy agreement.
- 40.4. The tribunal was satisfied that the sums sought for remedial works, amounting to £900.00, were reasonable.
- 40.5. The tribunal made an order for £4650.00, in respect of rent arrears and remedial works.

## **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.**

**13 May 2021**

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