



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/21/0008**

**Re: Property at 7 Lismore Drive, Linwood, PA3 3LT (“the Property”)**

**Parties:**

**Mrs Lillian McLeish, C/o Penny Lane Homes, 36 High Street, Johnstone, PA5 8AH (“the Applicant”)**

**Mr Christopher Quigley, Mr Jack Quigley and Mrs Susan Quigley, 7 Lismore Drive, Linwood, PA3 3LT (“the Respondents”)**

**Tribunal Members:**

**David Preston (Legal Member) and Ms Sandra Brydon (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of One Thousand One Hundred and Fifty Seven Pounds 55 pence (£1157.55) be made in favour of the Applicant.**

**Background**

1. This was an application for payment of £1200 arising from a Short Assured tenancy between the parties dated 23 September 2014, representing rent arrears accrued to the termination of the lease. After two Case Management Discussions (CMD) held by telephone on 22 March and 27 April 2021 and various emails from the applicant, the application was amended to a figure of £321.30 for arrears of rent plus £1473.24 for damages allegedly caused by the respondents during the tenancy from which fell to be deducted the sum of £403.90 being the amount of the deposit received by the applicant from Safe Deposits Scotland.
2. Following the CMD on 27 April 2021 the application was set for a full hearing on 9 June 2021. Present at the hearing were: the applicant, represented by Ms Kellie Deans, of Penny Lane Homes in Johnstone; Mr Christopher Quigley and Mr Jack Quigley on behalf of the respondents.

3. Prior to the hearing and in an email dated 7 June 2021 from Mr Jack Quigley on behalf of the respondents, they accepted liability and responsibility for certain elements of the applicant's claim. In particular they accepted responsibility for the: arrears of rent amounting to £321; the damage to the internal doors as claimed (£204.24); the costs of cleaning as claimed (£150); and the costs of clearing rubbish as claimed (£270). In the email he explained his reasons for contesting the other claimed items. The total sum admitted amounted to £624.24 in addition to rent arrears of £321.
4. At the hearing the applicant confirmed that she was looking to recover the costs of the remaining items as detailed in the statement of claim attached to the email from Ms Deans dated 25 May 2021: replacing carpets (£250); replacing blinds in living room (£252); painting and decoration (£100); replacement of toilet bowl and fixing radiator in bathroom (£150); and cost of replacement bins (£97). The total contested items amounted to £849.

### **Findings in Fact:**

5. The tribunal made the following findings in fact:
  - a) The parties entered into a Short Assured Tenancy Agreement on the 23 September 2014 which subsisted until the respondents vacated the property on 16 March 2021. Rent was payable at the rate of £575 per month and although deposit of £575 was provided for the sum of £403.90 was actually paid. The applicant to recover the full sum of £403.90 from safe deposits Scotland.
  - b) Rent arrears amounting to £321.30 were outstanding as at 3 June 2021.
  - c) When the property was vacated on a number of expenses were incurred by the applicant as a result of the condition in which the property was left as detailed in her email of 25 May 2021.
  - d) The carpets, blinds, toilet and radiator in the bathroom were damaged to a degree which exceeded that which the applicant was entitled to expect, notwithstanding that the carpets and blinds may have been approaching the end of their useful life.
  - e) The respondents accepted responsibility for the: arrears of rent amounting to £321; the damage to the internal doors as claimed (204.24); the costs of cleaning as claimed (£150); and the costs of clearing rubbish as claimed (£270). In the email he explained his reasons for contesting the other claimed items. The total sum admitted amounted to £624.24 in addition to rent arrears of £321.
  - f) In addition to the accepted sums the respondents are due to pay a sum of £212.25 to the applicant to contribute towards the additional costs and outlays incurred as a result of the condition of the property in which was left.

## Reasons for Findings

6. The applicant maintained her claim in respect of: replacement carpet (£250); replacement blinds (£252); painting and decorating (£100); replacement toilet bowl and fixing radiator and bathroom (£150); and replacement wheelie bins (£97).
7. The parties presented their arguments in respect of the disputed claims. The tribunal considered that there was merit in each party's arguments in respect of elements of the claim. There was neither agreement nor evidence presented to the tribunal as to the age of the carpets or the blinds and the tribunal was not able to determine with any accuracy from the quality of photographs submitted to it in evidence the actual extent of any damage for which the respondents would be responsible. The applicant accepted that the carpets would have a lifespan within a range of 7 – 10 years and the tenancy had subsisted for approximately 6.5 years. The tribunal determines that in any event carpets would require to be replaced at the end of the tenancy between the parties and accordingly this would not be the responsibility of the respondents. The applicant claimed to have replaced the slats in the blinds prior to the commencement the tenancy but was unable to produce any evidence which would enable the tribunal to identify responsibility for their replacement. The applicant referred to the missing and broken plastic chains at the foot of the slats in the Check-out Report dated 17 March 2021.
8. The applicant claimed that the condition of paintwork throughout the house was such that it required additional attention to what would normally be expected and that it required three or four coats of paint as opposed to one or two. The respondents argued that the property would require to be re-painted in view of the length of the tenancy.
9. The applicant claimed that the toilet bowl had been cracked during tenancy, which was denied by the respondents, and that the radiator in the bathroom had been knocked off the wall. The respondents maintained that the fixing of the radiator to the wall had not been satisfactory throughout the tenancy and had required to be fixed a number of occasions resulting in difficulty in having it securely fixed.
10. The applicant's agents, Pennylane Homes had carried out inspections of the condition of the property during the currency of the lease, but no evidence was produced to the tribunal of any concerns that had been raised as a result of these inspections and no correspondence or emails notifying the respondents of any concerns were produced.
11. The applicant maintained that the wheelie bins had been damaged by the tenant and they were the responsibility of the tenant to be replaced. The tribunal did not entirely accept the applicant's argument in this regard. Damage to wheelie bins can occur for a number of reasons including wind damage although they can also be subject to rough handling by bin collectors. However, the respondents had a responsibility to maintain the contents of the property, including the bins in at least a reasonable condition.

12. Clause 5.4 of the Short Assured Tenancy Agreement provides that *“the Tenant agrees to replace or repair (or to pay the cost, at the option of Landlord) any of the contents which are destroyed, damaged, removed or lost during the Tenancy and be liable for the costs of making good any damage cleaning fountain necessary at the end of the tenancy, fair wear and tear excepted.”*
13. In the absence of sufficient evidence which would enable the tribunal to come to a particular decision in respect of each head of claim it considers that some responsibility for these items lies with each party. The tribunal was required to assess the extent to which the damage to the disputed items might be attributable to “fair wear and tear” which cannot be an exact science. On the basis of the evidence presented to it in writing, photographs and at the hearing it determines on a balance of probabilities, that the additional costs should be borne by the respective parties in the proportion of 75% by the applicant and 25% by the respondents.
14. The tribunal therefore finds that the respondents are responsible for a total sum of £1157.55 being the: agreed rent arrears (£321.30); agreed costs of replacement doors, cleaning costs, and costs of clearing rubbish (£624); and contribution of 25% of the applicant’s outlays for other expenditure as determined (£212.25).
15. In his email of 7 June 2021 Mr Jack Quigley offered that the respondents would make payments at the rate of £150 in respect of the outstanding rent arrears “...and any damages that the tribunal has ruled as fair...” At the hearing he clarified that the payments would be made monthly. The applicant confirmed that such an arrangement was acceptable to her. The tribunal cannot make a Time to Pay Direction unless it has an application which the respondent submitted on 11 June 2021. On receipt it was copied to the applicant for information and by email dated 11 June 2021, Ms Deans confirmed that the applicant agreed to the instalments.

**David Preston**

14 June 2021