



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/1175

Re: Property at 48 Glenshee, Whitburn, West Lothian, EH47 8NY (“the Property”)

Parties:

Mr Gordon Irvine, 7 Fauldhouse Road, Longridge, West Lothian, EH47 8AQ (“the Applicant”)

Mrs Laura Haig, 1 River View, Lanark, ML11 8TJ (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mrs E Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that no order for payment should be granted.

Background

1. This is an application received in the period between 17th May and 5th July 2021, made in terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant is seeking an order for payment against the Respondent arising from a tenancy agreement in respect of the Property. There is no written tenancy agreement. The tenancy commenced on 28th January 2020 and ended on 30th April 2021. The rent was £850 per month. A tenancy deposit was paid by the Applicant to the Respondent on or around 5th January 2020 in the sum of £850. The Applicant was seeking payment in respect of several heads of claim.
2. Both parties lodged written representations and productions, including photographs of the Property and screenshots of social media messages.
3. A Case Management Discussion (“CMD”) took place on 30th August 2021. Following discussion, several heads of claim were withdrawn and the only remaining issue was whether the Applicant was entitled to have the remaining

balance of £300 of the tenancy deposit returned to him. A Direction was issued requiring further submissions and evidence and the case was set down for a hearing.

4. By emails dated 16th August and 9th September 2021, the Respondent lodged written representations and productions.
5. By email dated 30th August, and 8th and 20th September 2021, the Applicant lodged written representations and productions, including voice recordings of conversations between the parties.

The Hearing

6. A hearing took place by telephone conference on 21st September 2021. Both parties were in attendance. The Respondent was supported by her husband, David Haig.

Preliminary Matters

7. The Tribunal raised a number of preliminary matters:

- (i) **The status of Mr David Haig**

Following discussion, it was agreed he was attending as the Respondent's supporter.

- (ii) **The lodging of late evidence**

- (a) The Respondent had informed the hearing clerk that she was expected a witness statement from the handyman that carried out the decorating works to the Property after the tenancy ended. Responding to questions from the Tribunal, the Respondent said the handyman had personal issues and had been unable to provide the statement before the day of the hearing. It had not been provided before the start of the hearing, but was expected to arrive at some time during the morning.
 - (b) The Applicant had lodged documents the day before the hearing. Responding to questions from the Tribunal, he said the messages lodged had been on his daughter's phone and she had lost the phone. She got a new phone a few weeks ago but only discovered at the weekend how to download the old messages. They related to the deposit and viewing of the Property. The Respondent said she had received the messages but had not yet had an opportunity to view them.

The Tribunal adjourned to consider matters and decided not to allow the lodging of late evidence. Both parties had been informed at the CMD of the

need to lodge evidence timeously, and both had had sufficient time to provide all the evidence required.

The Applicant's position

8. The Applicant said he felt the sum of £300 should not have been retained from his deposit. He had installed a new door in the bedroom on the last day of the tenancy, so that should not be included in any claim by the Respondent. The Respondent had referred in messages to a quote from a handyman for decorating the hall and second bedroom, but no quote had ever been provided to the Applicant.
9. There were holes in the walls when the Applicant moved in. He accepted there had been some damage caused to the wall in the second bedroom during the tenancy when moving furniture, but he had filled in the holes before leaving the Property. The sum of £300 was excessive. The cost of decorating should not have exceeded £100. He did not argue the point at the time, as he had taken advice from the Citizen's Advice Bureau and had been advised to raise an application with the Tribunal.
10. The Applicant said his daughter had raised an issue with the Respondent at the commencement of the tenancy regarding scuff marks on the walls. She had asked if they could paint the Property and this had been refused. The Applicant referred the Tribunal to photographs taken on the day of moving out, in particular pictures of the hall and second bedroom. Responding to questions from the Tribunal about marks on the walls, the Applicant said they were there at the start of the tenancy.
11. Referring to photographs lodged by the Respondent that showed the Property prior to the Applicant moving in, the Applicant said the photographs were undated and the Property was furnished. It was not furnished when he moved in, and it was, in effect, a different property.
12. The Applicant pointed out that there was no mention of holes in the walls of the master bedroom in the message received from the Respondent's husband on 5th May 2021. It only mentioned the second bedroom and the hall. He had not realised the master bedroom was included in the areas to be decorated until today.

The Respondent's position

13. The Respondent said the door in the bedroom was not in issue. It had been replaced by the Applicant. The photographs lodged by the Applicant had been taken from a distance and did not show the extent of the holes and indentations. The Respondent referred to photographs she had lodged that showed holes in the second bedroom that had been filled by the Applicant, but not sanded. There were holes in the hall and the master bedroom that had not been filled. The handyman said they would have to paint the whole hall and both bedrooms as they could not paint sections of the rooms. The

handyman charged £300 for the work. This was broken down into £100 for plastering and £200 for painting.

14. The Respondent said the Applicant's daughter did not mention holes in the walls or scuff marks at the start of the tenancy. She asked to paint her room grey and this was refused. The Respondent accepted that the Property looked tired at the start of the tenancy. She wished to keep neutral colours and was concerned in case any decorating would not be done to a good standard.
15. The Respondent referred to photographs taken by an estate agent before the Property was let to the Applicant, stating that the Property was in good condition throughout at that stage.
16. The Respondent said there were voice messages lodged that indicated she had told the Applicant that both rooms required work. There was no response from the Applicant, so the Respondent did not think to ask for a written quote or invoice to provide to the Applicant. She assumed he had accepted the information in the message from her husband that mentioned a cost of £300. Responding to questions from the Tribunal, the Respondent was unable to say why her husband had not referred to the master bedroom in his message.

Findings in Fact and Law

17.
 - (i) During the tenancy, the Applicant and/or his family were responsible for causing holes and dents in the bedroom walls and the hallway of the Property.
 - (ii) The Applicant did not adequately repair the holes and dents in the bedroom walls and hallway of the Property at the end of the tenancy.
 - (iii) Plastering and painting works were required to repair the damage caused to the bedroom walls and the hallway of the Property.
 - (iv) The Respondent paid the sum of £300 in respect of the plastering and painting works required to the Property.
 - (v) Notwithstanding that there was no written tenancy agreement between the parties, there is an implied obligation upon the Applicant to use the subjects with reasonable care.
 - (vi) The purpose of the tenancy deposit was to provide security in the event that the Applicant did not meet his obligations in terms of the agreement between the parties.
 - (vii) The Applicant is liable for the cost of repairing damage caused to the Property during the tenancy.

- (viii) The Respondent was entitled to retain the sum of £300 from the tenancy deposit to cover the cost of the work carried out to repair damage to the Property.

Reasons for Decision

- 18. The Tribunal preferred the evidence of the Respondent to the Applicant regarding the condition in which the Property was left at the end of the tenancy.
- 19. The Tribunal took into account the fact that there was no mention of holes or marks on the walls in the messages lodged in response to the Applicant's daughter's list of issues at the start of the tenancy. The Tribunal did not have sight of the list of issues, nor did it have any evidence from the Applicant's daughter as to the extent of the issues, however, it was telling that the Respondent had not referred to any holes or marks in her response, as might be expected if significant issues had been reported.
- 20. The Tribunal took note of the voice messages that were lodged by the Applicant which indicated that the Respondent was shocked at the state in which the Property was left, and had told the Applicant that there were issues with the master bedroom. The Respondent's husband informed the Applicant that there were issues with the second bedroom and the hallway, and the likely cost of remedial works. The Tribunal considered it strange that the Applicant did not question these matters with the Respondent at the time, as might have been expected had he taken issue with the extent and cost of the work required.
- 21. The Respondent's photographs taken after the tenancy ended indicated significant holes in the bedrooms, some of which had been filled but not sanded. The Applicant appeared to have accepted that he had caused some damage to the Property.
- 22. The Tribunal did not consider the cost of the works to be excessive, considering works were required to two rooms and a hallway. It was unfortunate that no invoice or quote was lodged, however, the Tribunal accepted the evidence of the Respondent that she had not considered this necessary as the Applicant had not questioned matters.
- 23. The Tribunal considered that the Respondent was entitled to be recompensed for the damage caused, and she was entitled to retain that sum from the tenancy deposit.

Decision

- 24. No order for payment is granted.

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.


Helen Forbes

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Legal Member/Chair

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21st September 2021
Date