



**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/21/1834**

**Re: Property at 50 Cairngorm Gardens, Eastfield, Cumbernauld, G68 9JD (“the Property”)**

**Parties:**

**Miss Kasandra Gregal, 43 Heron Drive, Cumbernauld, G68 9GU (“the Applicant”)**

**Miss Danielle Kneller, 23 Glenfyne Road, Craigmarloch, Cumbernauld, G68 0DD (“the First Respondent”)**

**Mr Chadwick Carberry, 4 Wester Boghead, Crosshill Road, Lenzie, G66 4SR (“the Second Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member) and Mr A Khan (Ordinary Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that orders for payment should be granted in favour of the Applicant (1) against the First and Second Respondent in the sum of £2512.50; and (2) against the First Respondent only in the sum of £1380.**

**Background**

1. This is an application received in the period between 2<sup>nd</sup> August and 24<sup>th</sup> September 2021 made in terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Rules 2017, as amended. The Applicant is seeking an order for payment in the sum of £5488.69 in respect of rent arrears, cleaning, decorating and repair of alleged damage to the Property following a tenancy agreement between the parties. The tenancy agreement commenced on 24<sup>th</sup> February 2020 and ended on 18<sup>th</sup> June 2021. The Applicant lodged photographic and documentary evidence with the application.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 2<sup>nd</sup> December 2021. The Applicant was in attendance. The First Respondent was in attendance. It was her position that the Second

Respondent left the Property in the summer of 2020 and should not be responsible for the sums sought.

3. The case was set down for a hearing. A Direction was made to the Applicant to provide an address for the Second Respondent. By email dated 17<sup>th</sup> December 2021, the Applicant provided an address for the Second Respondent.
4. A hearing was scheduled to take place by telephone conference on 8<sup>th</sup> February 2022. The Applicant was in attendance. The Second Respondent was in attendance. The First Respondent was not in attendance and had emailed the Tribunal shortly before commencement of the hearing stating that she was unavailable due to unforeseen childcare issues.
5. The Tribunal heard from parties and agreed to adjourn the hearing in the interests of fairness to allow the First Respondent to be in attendance, and to allow the Second Respondent to take advice on his position, which was that he had left the Property in August 2020 and should not be responsible for the sums sought.

### **The Hearing**

6. A hearing took place by telephone conference on 17<sup>th</sup> March 2022. All parties were in attendance.
7. Evidence was heard from parties in regard to the following matters and costs claimed:

### **Joiner - £510**

#### **The Applicant's position**

8. The joiner's invoice, which was lodged by the Applicant, broke the sums down as follows:
  - (i) Replacement locks including damaged door handles x 2 - £150
  - (ii) Door replacements x 4 - £160
  - (iii) Labour - £200
9. The Applicant directed the Tribunal to photographs indicating damage to doors within the Property, which damage was discovered at the end of the tenancy. It was her position that four doors required to be replaced, although she had not photographed all the damage. She had discussed this with the joiner and he had said the doors could be repaired, but they would never look as good as new. The doors had been brand new at the start of the tenancy and she wanted them replaced. The new doors were primed and required to be glossed. There was also damage to a door frame and she thought it was also replaced, although this was not mentioned on the invoice.

10. It was the Applicant's position that Sheriff Officers had told her the door handles were broken when they attended to carry out the eviction. They would normally only replace the locks, but had to replace the handles and locks. The Applicant thought the joiner took about a day to do the work.

### **The First Respondent's position**

11. The First Respondent accepted that some work required to be done but she questioned why the Applicant had not used family members rather than a tradesman. It was her position that the cost was excessive and the doors could have been repaired rather than replaced, with the exception of the bathroom door, which she accepted had to be replaced. She had a baby gate at the bottom of the stair, which caused some damage. She said she did not have the time, mentality or money to carry out repairs at the end of the tenancy.

12. It was her position that the front door handle was always stiff, but neither external door handle was damaged. On the day she left the Property, she had left the key outside, under a bin, for the Sheriff Officers and had told the letting agent of this, but she accepted that the letting agent may not have passed this information on to the Sheriff Officers.

### **Cleaner - £250**

#### **The Applicant's position**

13. The Applicant had lodged an email from the cleaning company dated 16<sup>th</sup> January 2022 indicating that two cleaners had attended at the Property on 18<sup>th</sup> June 2021. The Property was in disarray and two cleaners were required for 5 hours each at a cost of £25 per hour. The normal cost for an end of tenancy in a 2 bed, 1 bath property would be £70 and the job would take roughly 2½ to 3 hours. The cleaning company indicated that they had to clear the property and remove rubbish before they could commence. The oven had to be given extra attention.

14. The Applicant directed the Tribunal to photographs indicating the extent of cleaning required in the Property including several rooms, the hob and oven, and rubbish left in the Property, some of which had been removed to the garden. There was also rubbish left in the garden. The Applicant said the carpets had been new at the start of the tenancy and were left stained. She cleaned the carpets herself. She had used the cleaning company on another occasion and was unsure whether the hourly cost was the same on that occasion. She felt the hourly cost may have been increased due to the state of the Property and referred the Tribunal back to the statement from the cleaning company.

### **The First Respondent's position**

15. The First Respondent said there was some rubbish left in the Property but the photos showed that some of the internal rubbish was moved outside and photographed again, which made the situation look worse than it was. She was ashamed at the state in which the oven was left, and accepted it required cleaned. She said she had no time, money or assistance to carry out cleaning and removing rubbish, as she was going through a difficult time, and she was worried about where she was going to live. It was her position that one person could have cleaned the Property in 5 hours, and two people were not required.

### **Sheriff Officers - £383.12**

#### **The Applicant's position**

16. The Sheriff Officer invoice had been lodged with the application, indicating that eviction was carried out on 18<sup>th</sup> June 2021. The Tribunal had already raised an issue as to whether the tenancy agreement allowed for a claim in regard to this cost. The Applicant said she had no option but to have the eviction carried out by Sheriff Officers. She was unable to point to anything in the tenancy agreement that allowed for recovery of this cost.

#### **The First Respondent's position**

17. The First Respondent said she did not feel she had a say in whether or not the costs should be claimed. She had been homeless before. She had phoned the council and they said they couldn't do anything about rehoming her until an eviction order was granted.

### **Rent arrears - £3137.50**

18. The Applicant said she has now received the sum of £650 from the tenancy deposit scheme, therefore, the current sum sought was £2512.50. The First Respondent accepted that this sum was due.

### **Painting and decorating costs - £1150 & Paint materials - £58.07**

#### **The Applicant's position**

19. The decorator's invoice lodged by the Applicant stated that two bedrooms, a study room, the entrance and the living area was decorated, with additional plaster throughout. The Applicant said the Property had been freshly painted at the start of the tenancy. She directed the Tribunal to photographs showing damage to plaster and wood work, and dirt and staining on the walls and ceilings. The decorating work had to be carried out. It was not possible to wipe the stained areas.

20. The Applicant had lodged additional receipts for painting materials. She explained that this was due to her dissatisfaction with the decorator, when cracking appeared. She purchased the materials and a relative carried out further work. She did not contact the decorator to ask him to rectify the problem areas, partly because it was difficult to get hold of him.

#### **The First Respondent's position**

21. The First Respondent said she believed the decorating costs to be too high. She accepted the Property was freshly painted at the start. It was her position that no caulk had been used by the decorator and this meant the Property began to look grubby quickly. The paint was not washable and this meant she could not wipe off marks made by her young child. She had tried to discourage him from touching the walls, but it was difficult due to his age. She would accept a sum of £300 to £400 for the decorating.
22. She did not feel she should be responsible for the additional costs to rectify the decorating work.

#### **Second Respondent's residence at the Property**

##### **The Applicant's position**

23. It was the Applicant's position that the Second Respondent lived at the Property throughout the duration of the tenancy. Her mother lives in the same street. The Applicant had seen his van at the Property. He had left a car at the Property and she had seen him collect it at a later stage, at which time the First Respondent was present. The Applicant had not been informed by the letting agent that the Second Respondent had left the Property. Responding to questions from the Tribunal as to what might be gained, particularly by the First Respondent, from being untruthful about when the Second Respondent left, the Applicant said it might be to do with increased benefits if she claimed to be living alone.
24. It was the Applicant's position that there was no proof that the Second Respondent left the Property. He remained liable for the sums sought. Responding to questions from the Tribunal regarding whether this was a just position, the Applicant said it was.

##### **The First Respondent's position**

25. The First Respondent said the Second Respondent left the Property in August 2020, and that he was not responsible for the rent arrears or the damage to the Property. The First Respondent had emailed the letting agent in August 2020 and asked that the Second Respondent be removed from the tenancy agreement. The letting agent said the Second Respondent would have to request this. The Respondents were no longer on speaking terms. She was not aware that the Second Respondent's van was outside the house. It is a busy street without designated parking areas, and there could be other vans

parked in the street. A car belonging to a friend of the Second Respondent was parked outside the Property.

26. The First Respondent said there was correspondence with the letting agent after the Second Respondent had left the Property regarding rent arrears, and a phone call in or around September 2020, and she had told the letting agent again that the Second Respondent had left. She said she should probably have sought help with the arrears but did not.
27. It was the First Respondent's position that she had nothing to gain from being dishonest about when the Second Respondent left the Property, and there was no monetary gain in terms of benefits.

### **The Second Respondent's position**

28. The Second Respondent said he contacted the letting agent by telephone when he left the Property in August 2020, but said there was no paper trail. He had been told to contact the First Respondent about this. He had not chased it up. He said he felt he should have done more to avoid legal liability. While he accepted he was legally liable, as he had not been removed from the tenancy agreement, he did not feel it was right that he should be liable. He said he had lost his job around the time of leaving the Property which meant that his van could not be parked outside. He had returned to live with his mother at that time.
29. Regarding the other claims, the Second Respondent said he did not see the state of the Property at the end of the tenancy. It was his position, based on the photographs, that the doors could have been repaired, the cleaning costs were excessive, the Sheriff Officers could have drilled out the lock and not damaged the handles, and double costs should not be claimed for decorating.

### **Findings in Fact and Law**

30.
  - i. Parties entered into a private residential tenancy agreement in respect of the Property that commenced on 24<sup>th</sup> February 2020 at a monthly rent of £625.
  - ii. The Second Respondent left the Property in August 2020. His name was not removed from the tenancy agreement.
  - iii. The tenancy ended on 18<sup>th</sup> June 2021.
  - iv. Rent lawfully due was not paid by the Respondents to the Applicant.
  - v. The Applicant is entitled to recover rent lawfully due.

- vi. The First Respondent failed to take reasonable care of the Property, leaving it in a state where cleaning and decorating was required.
- vii. The First Respondent caused damage to the Property, leaving it in a state where repair works were required, including two new doors, door handles and locks.
- viii. The sum sought in respect of joinery work is excessive. A reasonable sum for joinery work is £330.
- ix. The sum sought in respect of cleaning is excessive. A reasonable sum in respect of cleaning costs is £150.
- x. The sum sought in respect of decorating is excessive. A reasonable sum in respect of decorating is £900.
- xi. The sum sought in respect of additional decorating work in the sum of £58.07 is not due for payment by the Respondents.
- xii. The tenancy agreement does not allow the Applicant to recover the costs involved in carrying out the eviction.
- xiii. In terms of the tenancy agreement, the Respondents are jointly and severally liable for rent arrears and reasonable sums sought to clean, decorate and repair the Property.
- xiv. The Second Respondent was not residing in the Property when the damage that necessitated joinery, decorating and cleaning works took place.
- xv. It is just to reduce the Second Respondent's liability for the damage to the Property to nil.

### **Reasons for Decision**

31. The Tribunal considered the joinery costs to be excessive, as the evidence presented did not justify the replacement of four doors. The photographic evidence indicated that two doors required to be replaced, and that at least one door could have been repaired.

32. The Tribunal accepted that the external door handles were broken prior to the eviction, and that the costs for replacement of handles and locks was justifiable. The Tribunal reduced the labour costs by half, allowing a total cost for joinery of £330.

33. The Tribunal considered the cleaning costs to be excessive. It was not clear whether the hourly charge had been inflated due to the state of the Property. The Tribunal felt that, based on the photographic evidence, six hours would

have been sufficient to clean and empty the Property, amounting to the sum of £150.

34. There was nothing in the tenancy agreement that would allow the Applicant to recover the costs of eviction.
35. The Tribunal considered the decorating costs to be excessive. While the photographic evidence indicated significant marking and damage, it did not support the full decoration of all the rooms outlined in the invoice. Much of the photographic evidence focussed on the kitchen, which did not appear to have been redecorated. The Tribunal allowed a sum of £900 for the decorating costs.
36. Although the Tribunal would have preferred to have seen the decorating costs broken down further in the invoice, it considered the costs to be acceptable for the work required.
37. The Tribunal considered that the Applicant ought to have pursued the decorator to repair any unsatisfactory work, therefore, the additional costs for decorating materials were not claimable against the Respondents.
38. The Tribunal considered both Respondents to be credible and reliable in their evidence regarding when the Second Respondent left the Property. There appeared to be no reason to be dishonest about this matter. It was unfortunate that they did not pursue the matter with the letting agent to ensure that the Second Respondent was removed from the tenancy agreement. This has left the Second Respondent in a difficult position, when it was clear that he was not personally responsible for the rent arrears or the state in which the Property was left. However, in terms of the tenancy agreement, he remains jointly and severally liable with the First Respondent.
39. The Tribunal considered section 3(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1940 which provides:

**Contribution among joint wrongdoers.**

(1)Where in any action of damages in respect of loss or damage arising from any wrongful acts or negligent acts or omissions two or more persons are, in pursuance of the verdict of a jury or the judgment of a court found jointly and severally liable in damages or expenses, they shall be liable inter se to contribute to such damages or expenses in such proportions as the jury or the court, as the case may be, may deem just: Provided that nothing in this subsection shall affect the right of the person to whom such damages or expenses have been awarded to obtain a joint and several decree therefor against the persons so found liable.



The Tribunal considered that the jurisdiction provided to the court by the 1940 Act passed to it in terms of section 71 of the Private Housing (Tenancies) (Scotland) Act 2016. The Tribunal considered it would be just to reduce the Second Respondent's liability for the damage to the Property to nil, given that he was not residing in the Property when the damage that necessitated joinery, decorating and cleaning works took place. There is no provision that would allow the Tribunal to reduce the Second Respondent's liability for the rent arrears to nil.

## **Decision**

40. Orders for payment are granted in favour of the Applicant against (1) both Respondents in the sum of £2512.50; and (2) the First Respondent in the sum of £1380.

## **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.**

**Date:** 17<sup>th</sup> March 2022

**Legal Member/Chair:** Helen Forbes