



**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**

**Chamber Ref: FTS/HPC/CV/22/0988**

**Re: Property at Flat 31, Hendersons Court, Kelso, TD5 7BG (“the Property”)**

**Parties:**

**Mrs Lorna Hutchison, 8 Dean Park, Newstead, Melrose, TD6 9RQ (“the Applicant”)**

**Mr Benjamin Stephen, 3 Killie Court, Tweedbank, Galashiels, TD1 3SW (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £1,026.**

**Background**

By application, received by the Tribunal on 5 April 2022, the Applicant sought an Order for Payment against the Respondent in respect of unpaid rent, reimbursement of costs relating to damage caused to the flat beneath the Property and decoration and other repairs to the Property on the termination of a Tenancy Agreement between the Parties. The sum sought for unpaid rent was £688.20, for repairs to the flat beneath the Property, £564.80 and, for repairs, cleaning and decoration to the Property at the end of the tenancy, £638.

The application was accompanied by the following documents:

- Private Residential Tenancy Agreement between the Parties commencing on 17 July 2020 at a rent of £495 per month.
- Rent Statement showing arrears of £688.20 at the date of termination of the tenancy.

- Invoice dated 2 November 2021 for £440 for redecoration and repair work at the flat below the Property following a leak from the Property.
- Invoice dated 11 October 2021 for £78 for clearing a blocked basin drain in the Property, with an email from the contractor confirming that the blockage had been caused by a pen stuck within the waste trap.
- Invoice dated 24 February 2022 for £270 for painting work at the Property and other minor repairs.
- Invoice dated 24 February 2022 for £248 for replacing transformers, lamp holders and bulbs and fixing window handles.
- Invoice dated 9 February 2022 for £120 for cleaning the Property.
- Check Out Report dated 27 January 2022.
- Various emails relating to a leak of water into the flat beneath the Property.

In the application, the Applicant stated that there had been a leak into the flat beneath the Property on 2 October 2021. An email of 5 October 2021 from the plumbing contractor who attended stated that the Respondent had told him that he had left unattended a running tap in the bathroom wash hand basin, resulting in water leaking into the flat below. The email from the plumbing contractor had confirmed that when he tried to unblock it, he had found a pen stuck within the waste trap, which had, over time, collected hair and other debris, which had caused the blockage. An email of 4 October from the occupant of the flat beneath the Property stated that there was water damage to the ceilings of the second bedroom, hallway and bathroom, damage to a wall of a small bedroom, evidence that water had come through holes in the electric socket in the hallway, and water penetration under the laminate flooring in the hallway. The tenancy had ended on 26 January 2022.

On 28 April 2022, the Applicant confirmed to the Tribunal that she had received the full deposit of £595 for SafeDeposits Scotland and that the claim for rent arrears should be reduced to £93.20.

On 28 June 2022, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written representations by 19 July 2022. The Respondent did not make any written representations to the Tribunal.

### **Case Management Discussion**

A Case Management Discussion was held by means of a telephone conference call on the morning of 9 August 2022. The Applicant was present and was accompanied by Ashleigh Conlon of her letting agents, Galbraith, Kelso. The Respondent was not present or represented.

The Applicant told the Tribunal that she had explored the possibility of the damage to the flat beneath being covered by insurance but, as there was an excess on the policy of £500 for water damage, it had not been worth pursuing. The Respondent had reimbursed £46.80, being the cost of an electrical safety check in the flat beneath, but despite advising the Applicant's letting agents on 20 October 2021 that he would pay this and the other Invoices along with the rent at the end of the month, he had paid nothing more towards those costs.

The Applicant accepted that, in relation to the claims arising at the end of the tenancy, some deduction for wear and tear would be applied.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (procedure) Regulations provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal noted that the Respondent had not sought to contest any part of the claim and the Tribunal was satisfied that it had before it all the information and documentation it required to decide the application without a Hearing.

The Tribunal was satisfied that, net of the deposit of £595, the Respondent was liable for arrears of rent amounting to £93.20.

The Tribunal was satisfied from the wording of the Tenancy Agreement that the Respondent was liable for the cost of repairs where the need for them was attributable to the Respondent's fault or negligence, and that the Respondent had confirmed that he had left the running tap unattended. Accordingly, the Tribunal decided that the Respondent was liable to reimburse the Applicant the plumbing and decoration costs (£78 and £440 respectively). The Tribunal noted that the Respondent had included £46.80 with his rent payment of 1 November 2021, being the cost of the electrical safety check. This, however, had been credited to the rent account, artificially reducing the arrears of rent, so remained due by the Respondent. The Tribunal had not seen the Invoice for the electrical safety check, but was satisfied, from the fact that he had included it with his rent payment on 1 November 2021, that the Respondent accepted that this sum was due by him.

The Tribunal noted the contents of the Check Out Report, which stated that the Property had been poorly cleaned and highlighted a number of issues regarding missing, damaged or broken bulb holders and light fittings. Accordingly, the Tribunal decided that the Respondent was liable to reimburse the cost of cleaning (£120) and electrical work (£248). The cost of redecoration had been £270. The Tribunal noted that the Check Out Report had stated that the decoration had generally been in good condition and, whilst the tenancy had only lasted some 18 months, some element of wear and tear must be anticipated. Accordingly, the Tribunal did not uphold the claim for the costs of decoration following the termination of the tenancy.

Having considered all the elements of the Applicant's claim, the Tribunal decided to make an Order for Payment by the Respondent to the Applicant of the sum of £1,026, being the arrears of rent (£93.20), reimbursement of the costs of repairing damage caused to the flat beneath by the Tenant's fault or negligence (£78, £440 and £46.80) and the cleaning and electrical work required to the Property at the end of the tenancy (£120 and £248).

### **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.

X George Clark

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Legal Member/Chair

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9 August 2022  
Date