



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/22/2644

Re: Property at 37 Innellan Drive, Kilmarnock, Ayrshire, KA3 1SS (“the Property”)

Parties:

Mr Robert Morton, Mrs Amber Morton, 18 Thomas Baird Gardens, Kilmarnock, Ayrshire, KA3 1LH (“the Applicant”)

Miss Megan Cooksey, 47 Bruce Street, Kilmarnock, Ayrshire, KA1 4LS (“the Respondent”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr G Darroch (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicants in the sum of £3605.32.

Background

1. This is a Rule 111 case where the Applicants are seeking to recover costs for damage to the Property in the sum of £3605.32. The Applicants lodged a copy of a private residential tenancy agreement that commenced on 5th December 2019 and ended in May 2021, and various supporting invoices.
2. By email dated 7th December 2022, the Respondent lodged productions.
3. A Case Management Discussion (“CMD”) took place by telephone conference on 12th December 2022. All parties were in attendance.
4. The Applicants explained that they are experienced landlords and said they are aware there is always an element of fair wear and tear at the end of a tenancy, however, they had never had a property with such a level of damage. The sums sought were:

- (i) Keys - £7
- (ii) Blinds - £350
- (iii) Bath panel - £38.40
- (iv) Shower head - £17.98
- (v) Hose - £14.98
- (vi) Decoration - £1300
- (vii) Paint - £249.36
- (viii) New doors - £225
- (ix) Skip hire - £265
- (x) Glass repairs - £240
- (xi) Heating remote - £117.60
- (xii) Flooring - £780

5. The Respondent said she was disputing some of the costs claimed. She accepted the sum of £120 for the broken wardrobe door (included at (x) above) and £350 for the damaged blinds (ii). She disputed the remaining costs, saying they were costs that should be borne by the Applicants. She disputed that a skip was required as very little rubbish was left in the Property. She said there was a hole in the hall wall where the door handle had banged against the wall. She had tried to fill this in, and had also tried to fill in a hole in the bathroom door. She had started to decorate but had not been given the opportunity to complete the work due to being evicted. She had notified the letting agent that the shower was not working, but this had not been taken seriously. She disputed that a glass door panel was broken. She had taken photographs of the Property at the end of the tenancy, but required further time to find the photographs. She had submitted two photographs of the living room. The Respondent said she only had seven days to check and sign the inventory and noticed issues with the Property after that.
6. The case was continued to a hearing. The Respondent was advised to find out whether a solicitor could represent her at the hearing, and, if so, to lodge a written note of her defence.
7. A hearing was set down for 14th March 2023.
8. By email dated 22nd February 2023, the Applicants lodged written representations and productions.
9. By email dated 4th March 2023, the Respondent stated:

I have been meaning to contact you however I have been unfortunately busy to keep in correspondence. I'd like to make you aware that myself and all 3 of my witness are not able to make the Tribunal on the 14th March. I would also like to state I have been in touch with legal aid and the representative is busy on the 14th March and she then is on annual leave until mid April so unfortunately she is not going to take my case on as of right now. I have tried other legal aid companies throughout Ayrshire and Glasgow surrounding areas and each one has told me they do not specialise with housing tribunals. If you can allow a date

change for when all 3 of my witnesses are available and I am myself that would be greatly appreciated. Furthermore I would ideally like to try and source another legal aid representative as I feel this would heavily benefit my case.

10. By email dated 6th March 2023, the Respondent responded to a call for clarification by stating:

Yes I am confirming a postponement of upcoming case management. I can't do the whole of March up until the 9th April.

11. A response was provided to the Respondent by email dated 9th March 2023 as follows:

The Tribunal cannot consider a request for postponement unless it complies with the Procedural Rules. In order to comply with the Rules, you must:

1. Notify the other party of your request for a postponement;
2. Show good reason why a postponement is necessary;
3. Provide evidence as to why you are asking for a postponement.

You have given no information as to why you are not available until 9th April, or why your witnesses are not available on 14th March. Please provide this information with supporting evidence, if available, to the Tribunal and the Applicants as a matter of urgency.

Please be aware, in the absence of a proper application for postponement, that the hearing set down for 14th March 2023 is still scheduled to proceed on that date.

12. By email dated 9th March 2023, the Respondent replied:

My witnesses' won't be available until after 2pm on the 14th if there's any chance you can change time of the hearing as this is the only way that can accommodate everyone on my side of things.

13. By email dated 9th March 2023, a response was provided to the Respondent as follows:

The hearing will proceed at 10am on 14th March 2023, at which time further discussion will take place regarding the procedure to be adopted for the hearing, and the approximate timescale for calling witnesses. The Respondent's witnesses are not required until the Applicants' case has been heard, and this may take some time. Parties should attend as scheduled at 10am, and witnesses should remain on standby to be called when required.

14. A hearing took place on 14th March 2023 by telephone conference. The Applicants were in attendance. The Respondent did not attend. An attempt was made to contact the Respondent by telephone, with no success. The Tribunal decided to adjourn the hearing to another date to allow the Respondent further time to obtain legal representation, and to ensure her witnesses were available. The Tribunal decided to make a Direction for this and the conjoined case FTS/HPC/CV/22/2578 dated 14th March 2023 to the Respondent in the following terms:

The Respondent is required to provide:

1. The reason for her failure to attend the hearing set down for 14th March 2023.
2. A witness list giving full contact details for her witnesses.
3. Full details of attempts made by the Respondent to find legal representation, and details of the current position with regard to legal representation.
4. A rent statement setting out rental payments made to support her previous submission that the sum of £3050 is outstanding.
5. The Respondent's contact details, including a current telephone number.

The said documentation should be lodged with the Chamber no later than close of business 14 days after the date of issue of this Direction.

15. The Respondent did not comply with the Direction of the Tribunal.

16. A further hearing was set down for 21st June 2023 and parties were notified of the same on 18th May 2023.

17. By email dated 22nd May 2023, the Respondent stated as follows:

Hi I'm unable to attend this tribunal on the 21st as I am on holiday for 2 weeks. I won't actually be in the country.

18. By email dated 24th May 2023, the Respondent confirmed that she was seeking a postponement, stating again that she would be on holiday on the date of the hearing.

19. The following notification was sent to the Respondent:

Any application for postponement must be made in terms of our procedural rules, which require you to:

- 1) Notify all other parties of your request

2) Show good reason why a postponement is necessary

3) Produce evidence of any fact or matter relied on in support of the application.

Please now ensure that you have complied with the above. We look forward to receiving evidence of your inability to attend, after which the Tribunal will consider your application for postponement.

Please note that, in the absence of a proper application for postponement, the hearing will go ahead as scheduled.

It is also noted that you have failed to comply with the Direction of the Tribunal dated 14th March 2023.

20. By email dated 2nd June 2023, the Respondent lodged a screenshot of airline flight and travel information showing a booked flight to Belfast on 21st June 2023 to leave at '6.10'. There was no passenger name on the flight and travel information.

21. The Tribunal considered the application for postponement and decided not to grant it, stating as follows:

The Tribunal has considered the Respondent's application for a postponement and has decided not to grant the application. The Respondent has not shown good reason why a postponement is necessary, and she has failed to produce sufficient evidence in support of her application. The Respondent has provided flight information that includes no passenger name or date of booking. The hearing is due to take place by telephone conference, and the Respondent does not have to attend a venue, or participate from her home address. No reason has been given as to why she cannot participate from elsewhere.

The Tribunal notes that the Respondent has also failed to comply with a Direction of the Tribunal dated 14th March 2023 regarding her failure to attend at the last scheduled hearing, and ordering her to provide information regarding other matters including matters relating to her defence of the application.

For the avoidance of doubt, the hearing scheduled for 10am on 21st June 2023 will proceed.

22. By email dated 6th June 2023, the Applicants made the following written representations:

Due to the lack of engagement by the other party, we took it upon ourselves to check the flight details provided.

As per the EasyJet website there is no 06:10am flight from Glasgow to Belfast International on that date. You can verify yourself here: Cheap flights from Glasgow to Belfast Intl from £22.99 | easyJet and screenshots below for your convenience.

There is however a 16:10 flight under flight code EZY54. Has this documentation been altered (falsified?) to give the impression that the other party is not available at the scheduled time?

You can also see by the 06:30am flight on the same day that the EasyJet format is to use "06:10" i.e., 4 digits, and it would not be in the format provided on the respondent's documentation. We would also suggest, that if you enlarge the EasyJet booking provided, you can see that the '4' for the bag drop time has been tampered with.

Considering this, it appears to me that the respondents flight is at 16:10 so we respectfully request that the hearing goes ahead as planned at 10am on Wednesday 21st June.

23. By email dated 6th June 2023, the Respondent provided a further screenshot of the flight and travel information which showed a flight to Belfast on 21st June 2023 at '16.10', and stated:

Hello.

In regards to my last email, I had sent the WRONG screenshot. I don't appreciate the fact Robert Morton and his wife are checking up on me AGAIN. I feel heavily stalked and threatened.

Attached below is my actual flight ticket, my witnesses' are already on "holiday" I am travelling for a bereavement and would appreciate if this was postponed as all me and witnesses are again unavailable.

24. The Tribunal considered the Respondent's application for postponement of the hearing and decided not to grant it, stating:

The Tribunal has taken account of previous representations made by the Applicants which suggested that the Respondent altered the airline evidence lodged on 2nd June 2023. Having now reviewed the 'actual flight ticket' lodged by the Respondent on 6th June 2023, it would appear that there is merit in the Applicants' representations that the first document submitted to the Tribunal by the Respondent was amended in order to give the appearance that the Respondent was not available on the morning of 21st June. The Tribunal views any such amendment of evidence by a party as an extremely serious matter. In any event, it is now clear that the Respondent will be available on the morning of 21st June 2023, therefore, the hearing will proceed on that date. The Tribunal notes that no evidence has been provided to substantiate the claim that the Respondent's witnesses are, again, on holiday.

The Hearing

25. A hearing took place by telephone conference on 21st June 2023. The Applicants were in attendance. The Respondent was not in attendance. The Tribunal considered the terms of Rule 29. The Tribunal considered that the requirements of Rule 24(1) had been satisfied, and it was appropriate to proceed with the application in the absence of the Respondent. The Tribunal noted that, although the Respondent had claimed to be unavailable on the date of the hearing, stating initially that she would be on holiday and out of the country, and then stating that her unavailability was due to her travelling because of a bereavement, her flight was not due to leave until 16.10 on the afternoon of the date of the hearing, and no reason had been given by the Respondent why she could not be in attendance on the morning of the hearing.
26. The Applicants said the Property was let unfurnished. It was clean and tidy at the start of the tenancy. The décor was neutral throughout, and the walls were clean. The carpets had been cleaned and were in good condition.
27. The Applicants went through the sums claimed, for each of which vouching had been lodged. The Applicants referred to the Exit Schedule of Apparent Condition dated 9th June 2021, as completed by the letting agent, and photographs lodged.
- (i) Keys - £7 – The Respondent was evicted and did not return the key.
 - (ii) Blinds - £350 – Photographs had been lodged showing the damage to the blinds. The Respondent had accepted the sum sought at the CMD.
 - (iii) Bath panel - £38.40 – The bath panel was cracked and had to be replaced.
 - (iv) Shower head - £17.98 – The shower head had been broken and bound with tape.
 - (v) Hose - £14.98 – The hose required to be replaced.
 - (vi) Decoration - £1300 – The Respondent put up wallpaper without permission, and painted the Property. Some of the wallpaper had been peeled off. The Applicants said it was not a case of them redecorating throughout because the décor was not to their taste. Rather, the wallpaper had to be removed, and the Property had to be redecorated due to the state in which it was left. The decorator had also filled the three holes in the wall caused by the Respondent.
 - (vii) Paint - £249.36 – The Applicants sourced the paint materials at trade price.

- (viii) New doors - £225 – Two doors were damaged. The Respondent had attempted to fill a hole in one of the doors. The doors could not be repaired, and had to be replaced.
- (ix) Skip hire - £265 – A skip was required due to the amount of rubbish and belongings left by the Respondent, which included a mattress. There was rubbish in every room. The Applicants referred to the inventory of items left, which was completed by the Sheriff Officers at eviction. Carpets and underlay took up considerable space within the skip. The Applicants also replaced the kitchen. There was some damage to the kitchen drawers, handles and worktops. No charge was made for this to the Respondent, as the Applicants expected the kitchen would require replacement in due course.
- (x) Glass repairs - £240 – The panel by the front door was cracked. The Applicants believed this was due to the Respondent slamming doors. The Respondent had caused a hole in the wall by forcing a door open. The Respondent had accepted at the CMD that she was liable for the cost of replacing a cracked wardrobe door, which was included within this cost.
- (xi) Heating remote - £117.60 – The remote control for the heating was missing at the end of the tenancy.
- (xii) Flooring - £780 – The Applicant, Mr Morton, is a carpet cleaner. He said he tried to clean the carpets and was successful in saving the two upstairs bedroom carpets. The other carpets had to be replaced as they were dirty, and had been damaged by the Respondent's cat

28. In response to questions from the Tribunal, the Applicants said they would always expect some deterioration in a property at the end of a tenancy, and similar wear and tear to that which they would expect in their own home. They would not charge a tenant for such wear and tear. They would always clean the carpets and carry out any redecoration required. The condition of the Property was not like anything they had ever seen before. The decoration carried out by the Respondent was not only unauthorised; it was badly done, with paint extending onto the ceilings. Every wall and ceiling had to be redone. The Applicants said there had been no inspections during the tenancy, due to Covid restrictions. The Respondent had always 'sworn blind' there was no cat in the Property, but the Applicants lived close by and had seen the cat on the windowsill.

29. Mr Morton referred to the fact that the Respondent had claimed to have 'got off with' the criminal matter that led to her eviction. However, the Applicants had procured a copy of the extract conviction which showed that she was admonished and dismissed. Mr Morton submitted that the fact that the Respondent had amended evidence told the Tribunal everything they needed to know about the Respondent's character.

Findings in Fact and Law

- 30.
- (i) Parties entered into a private residential tenancy agreement that commenced on 5th December 2019 and ended in May 2021.
 - (ii) The Property was in a good and tidy condition at the start of the tenancy.
 - (iii) In terms of clause 17 of the tenancy agreement, the Respondent undertook to take reasonable care of the Property.
 - (iv) The Respondent failed to take reasonable care of the Property in breach of clause 17 of the tenancy agreement.
 - (v) In terms of clause 25 of the tenancy agreement, the Respondent undertook to repair or replace any of the contents destroyed, damaged, removed or lost during the tenancy where this was caused wilfully or negligently by the Respondent or anyone visiting her.
 - (vi) The Respondent failed to repair or replace contents destroyed, damaged, removed or lost during the tenancy where this was caused wilfully or negligently by the Respondent or anyone visiting her in breach of clause 25 of the tenancy agreement.
 - (vii) In terms of clause 28 of the tenancy agreement, the Respondent undertook not to carry out any internal or external decoration without the prior written consent of the Applicants.
 - (viii) The Respondent carried out internal decoration without the prior written consent of the Applicants in breach of clause 28 of the tenancy agreement.
 - (ix) In terms of clause 32 of the tenancy agreement, the Respondent undertook to dispose of all rubbish in an appropriate manner and at the appropriate time.
 - (x) The Respondent failed to dispose of all rubbish in an appropriate manner and at the appropriate time in breach of clause 32 of the tenancy agreement.
 - (xi) The Applicants incurred costs to rectify the Respondent's breaches of the tenancy agreement.
 - (xii) The costs claimed by the Applicants were not attributable to fair wear and tear.

- (xiii) The full costs claimed by the Applicants to rectify the Respondent's breaches of the tenancy agreement were reasonable and justified.
- (xiv) The Respondent is liable for the costs to the Applicants in rectifying her breaches of the tenancy agreement.

Reasons for Decision

31. The Tribunal accepted the evidence of the Applicants that the Property was in good condition at the start of the tenancy, noting that the Respondent failed to provide any evidence to the contrary. The Respondent claimed at the CMD that she had only had seven days to sign the inventory at the start of the tenancy and noticed problems thereafter; however, the Tribunal considered seven days to have been ample time to have checked the Property and notified the Applicants of any concerns.
32. The photographs lodged by the Applicants, together with the Exit Schedule and the evidence of the Applicants, indicated the condition in which the Property had been left by the Respondent, with damaged items and discarded rubbish. This was in breach of the terms of the tenancy agreement. The Tribunal took into account that the Applicants had attempted to clean all the carpets before discovering that some of the carpets required to be replaced. The damage caused to the carpets was beyond fair wear and tear. The damage caused to walls, doors and glazed items was beyond fair wear and tear.
33. The decoration costs could not be attributed to fair wear and tear, given that the Respondent had decorated the Property to a poor standard and then attempted to remove some of the wallpaper, leaving it in an unsatisfactory state. The Tribunal considered that the Applicants had no choice but to have the Property redecorated. The Applicants behaved reasonably in sourcing decorating materials at trade price, and thus reducing the cost claimed from the Respondent.
34. The Respondent was not present at the hearing to put forward her defence, nor did she lodge any evidence to support her defence. She claimed to have photographs that would support her defence, but they were not lodged. It was not clear what the Respondent intended to evidence by the two photographs that were lodged.
35. The Tribunal had regard to the comments made by the Respondent at the CMD, when she disputed the costs claimed, with the exception of the blinds and the glass wardrobe door. However, no evidence was provided to substantiate her defence. The Tribunal was concerned by the likelihood that the Respondent had altered evidence previously provided to the Tribunal in respect of her second request for a postponement, and had submitted contradictory reasons for applying for a postponement of the hearing. The Tribunal considered that the foregoing tended to cast significant doubt upon the Respondent's credibility.

36. In all the circumstances, the Tribunal considered that the Respondent was in breach of her obligations under the tenancy agreement, and the costs claimed by the Applicants in respect of the Respondent's breaches were justified and reasonable.

Decision

37. An order for payment is granted in favour of the Applicants in the sum of £3605.32.

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.

Legal Member

21st June 2023
Date