



**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/22/2949**

**Re: Property at Flat 2/1 38 Earnock Street, Glasgow City, G33 1HL (“the Property”)**

**Parties:**

**Mr Robin Anyadiegwu, 228 Canterbury Way, St Nicholas, Stevenage, SG1 4DW (“the Applicant”)**

**Mr Howard Hasha, 2 Somersby Close, Farley Hill, Luton, LU1 3XB (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an Order for Payment in the sum of THREE HUNDRED AND FIFTY-THREE POUNDS AND SIXTY-SEVEN PENCE (£353.67)**

**Background**

1. The applicant submitted an application seeking a payment order in the sum of £400 in respect of a tenancy deposit that had not been returned at the end of a tenancy between parties. The application was accepted on 30<sup>th</sup> August 2022.
2. The following documents were lodged with the application :
  - “Assured Short hold tenancy agreement”
  - Copy email correspondence between the parties

- Copy text messages between the parties
  - Copy bank statement from the applicant
3. The present application was conjoined with an application seeking an award under regulation 9 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 under reference number **FTS/HPC/CV/22/2948**.
  4. The respondent lodged written submissions and photographs of the property in advance of the case management discussion.

**First case management discussion (“cmd”) – teleconference – 30<sup>th</sup> January 2023**

5. Both parties attended the first case management discussion.
6. Both parties confirmed that the applicant moved into the property after signing a lease agreement on 5<sup>th</sup> March 2018. The agreed rent was £400 per month. Initially the applicant moved into the property on his own however, his brother Ivan Anyadiegwu joined him shortly after he moved into the property. The rent was subsequently reduced to £300 per month after Ivan Anyadiegwu moved out of the property in February 2022. Both parties confirmed that a deposit of £400 had been received after the tenancy commenced.
7. The respondent accepted that the deposit had not been placed in a suitable tenancy deposit scheme.
8. The applicant moved out of the property and returned the keys to the respondent on 14<sup>th</sup> May 2022.
9. The applicant lodged extensive text message and email conversations between parties. Shortly after the applicant left the property parties fell into dispute over the condition of the property and the return of the deposit.
10. In his written submissions the respondent states that due to the condition of various items in the property he required to pay out £1764.33.
11. The following items were noted in the written submission from the respondent.
- 12. Mirror wardrobe doors:** photographs lodged by the respondent showed that there was damage to the wardrobe doors. The respondent accepted that there may have been some slight damage to one of the doors at the commencement of the tenancy however there had been significant damage during the duration of the tenancy. The applicant stated that his brother had a medical condition which resulted in him falling against one of the doors which caused some

damage. He had made the respondent aware of this at the time and had been told not to worry about the damage. This was disputed by the respondent who said the level of damage was such that the wardrobes were dangerous and he would not have allowed them to remain in that condition had he known.

**13. Bed frame and mattress:** the respondent advised that there was damage to the bed frame and mattress beyond reasonable wear and tear. The applicant did not accept that there was significant damage to the items.

**14. Key fob:** The applicant accepted that the key fob required to be replaced. The respondent had lodged an invoice showing that the cost of replacement was £46.33.

**15. Samsung TV set:** the respondent stated that the TV had been damaged due to the applicant using it for gaming when it was not suitable for that purpose.

**16.** The applicant had not responded in detail to the issues raised in the respondents written submissions. It was agreed in discussion that the applicant would lodge a written response setting out his position in relation to the various items noted above.

**17.** The Tribunal noted that the respondent had specified in his written submissions that he sought to counterclaim in the sum of £1364.33 in respect of costs in addition to the deposit sum which were incurred due to the applicant's conduct. The Tribunal explained that no such amount could be awarded in the present application however, if the respondent sought an order for payment they would require to lodge a separate application seeking payment. There was a possibility that such an application could be conjoined and dealt with by the Tribunal alongside the present application.

### **Second case management discussion – 19<sup>th</sup> June 2023 – teleconference**

**18.** The applicant was in attendance. The respondent was not present or represented. The Tribunal was satisfied that the respondent had been given proper notice of the cmd and determined to proceed with the cmd in the respondents absence in term of rule 29.

**19.** The applicant had not lodged any supplementary written submissions as directed by the Tribunal following upon the previous cmd.

20. In addition to the submissions at the first cmd the Tribunal heard the following evidence from the applicant:
21. The applicant accepted that the cost of replacing the key fob should be deducted from the deposit.
22. The applicant stated that the double bed in the property was of poor quality. It had been shared by the applicant and his brother and was not strong enough – this had resulted in damage to the frame.
23. The television in the property had not been working properly when the applicant moved in the property. The applicant's brother did use the television to play computer games however, this was without sound. During the tenancy the applicant bought a new television for use by his brother and did not use the television provided by the respondent.

#### Finding in fact

24. Parties entered into a tenancy agreement with a commencement date of 5<sup>th</sup> March 2018.
25. A deposit of £400 was paid to the respondent at the commencement of the tenancy.
26. The tenancy terminated on 5<sup>th</sup> June 2022.
27. The respondent failed to return the deposit to the applicant at the end of the tenancy period.
28. The sum of £46.22 was due to be deducted from the deposit to cover the cost of a replacement key fob.

#### **Reasons for Decision**

29. The Tribunal took into account the applicant's written and oral submissions, the written submissions of the respondent and his submissions at the previous cmd.
30. The Tribunal noted that the respondent had failed to adhere to the legal requirement to place the tenancy deposit in a relevant tenancy deposit scheme.
31. The Tribunal took into account the respondent's failure to attend the second cmd to challenge the order being sought.
32. The Tribunal accepted the applicant's evidence that any deterioration to the property was due to fair wear and tear.

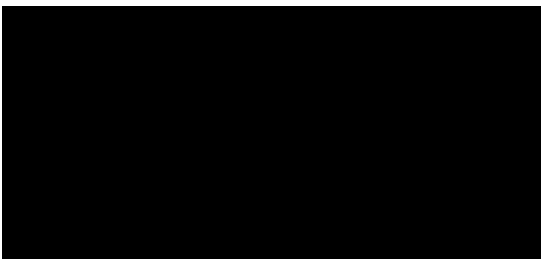
33. The Tribunal accepted the applicant's evidence that there had been pre-existing damage to the mirrored wardrobes in the property and that the respondent had agreed that the applicant would not be charged for subsequent damage caused by the applicant's brother falling against the wardrobes.
34. The Tribunal accepted that the sum of £46.33 should be deducted to cover the cost of a replacement key fob.

### **Decision**

**The Tribunal determined to grant an order for payment in the sum of THREE HUNDRED AND FIFTY-THREE POUNDS AND SIXTY-SEVEN PENCE (£353.67)**

### **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/Chair**

**\_19<sup>th</sup> June 2023\_\_\_\_\_**  
**Date**