



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/23/0275

Re: Property at 18 Thomson Drive, Airdrie, North Lanarkshire, ML6 9DG (“the Property”)

Parties:

Mr Peter McCluskey, Mrs Pauline McCluskey, 26 Cherrybank Walk, Airdrie, ML6 0HZ (“the Applicants”)

Ms Alicia Zambonini, Ms Eileen Zambonini, 45 Kennilworth Drive, Airdrie, ML6 7EY; 78 Broompark Crescent, Airdrie, ML6 6DA (“the Respondents”)

Tribunal Members:

Nicola Irvine (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Second Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondents in favour of the Applicants in the sum of £1,424.89.

1. The Applicants submitted an application under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The Applicants sought an order for payment in respect of the cost of repairs carried out to the property.
2. This application previously came before the Tribunal for a Case Management Discussion (“CMD”) on 30 June 2023. The Tribunal issued a Note and Notice of Direction following the CMD.

The Hearing

3. The Hearing took place by conference call. The Applicants were represented by Mr McKeown and the First Respondent joined the call personally. The Second Respondent failed to join the conference call and the Hearing proceeded in her absence.
4. The First Applicant indicated that he intended to give evidence but did not intend to call any other witnesses; the First Respondent indicated that she intended to give evidence and did not intend to call other witnesses. The evidence given by the parties is summarised below. The summary is not a verbatim account of what was said at the Hearing but rather an outline of the matters relevant to the Tribunal's consideration of the application. At the conclusion of the evidence, the Tribunal adjourned the Hearing to enable the members to consider the evidence given. The parties were advised that a written decision with a statement of reasons would be issued to parties.
5. The purpose of the Hearing was to determine whether the Respondents were liable to pay the Applicants for damage to the property and some items in the property.

Summary of evidence

Mr Peter McCluskey

6. The First Applicant referred to the short assured tenancy, signed by both parties, which began on 24 November 2017. He referred to the check in report which he prepared at the outset of the tenancy. He completed the typewritten parts of the check in report and gave it to the First Respondent to check and return. The First Respondent inserted ticks on the check in report and returned it to the Applicants with no further comment. The property was in good condition at the outset of the tenancy. The First Applicant carried out an inspection of the property just before the end of the tenancy. He prepared a check out report which contains photographs. The photographs show areas of damage to the property which were not present at the outset of the tenancy. The Applicants sent the check out report to the Respondents following termination of the tenancy but the Respondents did not respond. The areas damaged and the cost of repairing the damage are as follows:-

a) Front door

The Applicants obtained an estimate to have the damage to the door repaired. The report is lodged in support of the application and indicates that the door may have been damaged by kicking and the weather bar had been removed. The cost of repairs is £310.

- b) Back door
The weather bar has been removed. The cost of replacement is £10.
- c) Living room curtain plate & kitchen window sill
The curtain plate has been damaged beyond repair and had to be replaced. The kitchen window sill was damaged and had to be replaced. The cost of these items was £110.
- d) Kitchen redecoration
The ceiling of the kitchen was water damaged as a result of a leak from the bathroom above it. The Applicants made a claim on their insurance policy and had that damage repaired. That does not form part of the present claim. The kitchen needed redecoration to restore it to the condition at the outset of the tenancy. The cost of redecoration was £140.
- e) Washing machine
Although the washing machine was in working order, the paddles were missing from the washing machine and had to be replaced. The Applicants do not know whether that could be attributed to wear and tear. The cost of the replacement paddles was £10.29.
- f) Box room redecoration
The First Respondent accepted liability for this. The cost of the work was £130.
- g) Box room flooring
At the outset of the tenancy, box room had laminate flooring covered with a carpet. There was no agreement between the parties that the First Respondent could have new flooring installed which involved adhesive on the laminate flooring. The adhesive damaged the laminate flooring and the flooring needs to be replaced. The cost of replacement flooring is £132.90. The Applicants have not yet incurred the cost of the replacement flooring and have had a new carpet fitted in the meantime.
- h) Main bedroom wardrobe doors
One of the mirrored doors was cracked and had to be replaced. The First Respondent accepted responsibility for this damage. The cost of replacement doors was £448.
- i) Cleaning costs
The Applicants had the whole property professionally cleaned which included having the carpets deep cleaned. The cost of the cleaning was £400. The tenancy agreement provides that the Applicants were entitled to

have the property professionally cleaned and to seek reimbursement from the Respondents.

j) Skip hire

The Applicants had to hire a skip to have the First Respondent's belongings removed from the property. The First Respondent accepted liability for this. The cost of skip hire was £240.

k) Blinds

There were blinds in 2 of the rooms at the outset of the tenancy but they were not there at termination of the tenancy. The Applicants replaced the blinds at a cost of £80.

l) Sound meter

During the tenancy, the First Respondent reported to the Applicants that the neighbours were noisy. The Applicants bought a sound meter so that the noise levels could be measured and assessed. The sound meter was not in the property when the First Respondent vacated the property.

Alicia Zambonini

7. The First Respondent maintained her position as set out at the CMD on 30 June 2023. The Applicants were frequently in the property and were aware of the condition of the property when the First Respondent was in occupation. Neither of the Applicants said anything to her about how the property looked. They were aware of what the box room was being used for. She employed a contractor to fit the linoleum flooring in the box room and did not stipulate how it should be fitted. The Applicants told her that she could decorate the property in any way she wished. It was only after she moved out of the property that the Applicants told her she would have to change the décor back to how it was at the outset. She did not remove the weather bars from the doors of the property and in fact did not even know what they were. She was not aware of anything missing in the property.

Findings in fact

8. The Applicants and First Respondent entered into a short assured tenancy which commenced 24 November 2017.
9. The Second Respondent guaranteed the performance of the First Respondent's obligations in terms of the tenancy agreement.
10. The front door of the property was damaged and the weather bar had been removed during the First Respondent's occupation of the property and requires repairs.
11. The back door of the property was damaged during the First Respondent's occupation of the property in respect that the weather bar was removed.

12. The curtain plate was damaged during the First Respondent's occupation of the property and had to be replaced.
13. The kitchen window sill was damaged during the First Respondent's occupation and had to be replaced.
14. The kitchen and box room required redecoration following the First Respondent's occupation of the property.
15. The box room flooring was damaged during the First Respondent's occupation of the property and requires to be replaced.
16. The main bedroom wardrobe doors were damaged during the First Respondent's occupation of the property and had to be replaced.
17. The Applicants had the property professionally cleaned following the termination of the tenancy.
18. The Applicants' hired a skip to remove the belongings left behind by the First Respondent.
19. The Applicants replaced blinds in the property.
20. The Applicants replaced a sound meter in the property.

Reasons for decision

21. The Tribunal clarified with the Applicants' representative that the First Respondent's deposit of £595 was recovered by the Applicants and is to be applied towards the cost of repairs. The total claim made by the Applicants was therefore £1,435.18 and the Applicants' representative moved for an order for payment in that sum.
22. The onus of proof rests with the Applicants to establish their claim for the various heads of claim referred to. Having considered each of those heads of claim in turn, in light of the evidence, the Tribunal was satisfied that the Applicants have discharged the onus of proof in respect of all heads of claim with the exception of the repair undertaken to the washing machine. Where the evidence of the First Applicant was at odds with the First Respondent, the evidence of the First Applicant was preferred.
23. The First Respondent accepted responsibility for a number of items of expenditure, namely, the damage to the kitchen window sill, redecoration of the box room, damage to the mirrored wardrobe doors and the cost of skip hire.
24. Clause 14 provides that the Applicants could charge the First Respondent for damage caused to the property and for professional cleaning.
25. The First Applicant gave an account of the condition of the property at the outset of the tenancy. The First Respondent did not dispute or challenge that account. The First Respondent sent a copy of the check out report to the First

Respondent and received no response. If the First Respondent disputed the items listed on the check out report, one would have expected her to tell the Applicants that she disputed that from the outset.

26. The quotation obtained by the Applicants in relation to the front door indicated that the author of that quotation considered the damage to have been caused by kicking. The Tribunal therefore considered that the damage was not caused by fair wear and tear and therefore the Applicants are entitled to recover the cost of the repair from the Respondents.
27. The First Respondent's explanation for the damage to the curtain plate was that curtains had been hanging there. The Tribunal was not persuaded by the explanation given by the First Respondent. There did not appear to be any dispute that the curtain plate was damaged and needed to be replaced. The Tribunal did not consider that the damage could have been considered to be fair wear and tear. The Tribunal therefore considered that the Applicants are entitled to recover the cost of the repair from the Respondents.
28. The First Respondent gave a detailed explanation about the decoration of the kitchen and explained that an insurance claim had previously been made about water damage to the kitchen and that formed no part of the present claim. The evidence of the First Applicant in relation to this matter was unchallenged. The Applicants produced a receipt in relation to the redecoration cost of the kitchen and the Tribunal was satisfied that the Applicants are entitled to recover that cost from the Respondents.
29. The First Respondent was not sure whether the missing paddles from the washing machine were wear and tear or not. The Tribunal was not satisfied that this repair went beyond fair wear and tear and therefore the Applicants were not entitled to reimbursement from the Respondents.
30. There was no evidence of a specific discussion about the installation of linoleum in the box room, using adhesive on the laminate flooring. The First Respondent removed and disposed of the carpet which was in the box room. The Applicants require to replace the laminate flooring which was damaged by the application of adhesive and in the meantime, the Applicants incurred the cost of replacing the carpet. The Applicants are entitled to recover that cost from the Respondents.
31. The Applicants have produced a receipt in respect of the cleaning of the property, which included a deep clean of the carpets. In terms of the tenancy agreement, the Applicants are entitled to charge the Respondents for a professional cleaning service. The Applicants are therefore entitled to recover that cost from the Respondents.

32. The Applicants produced a receipt in respect of replacement blinds for the property. The Tribunal was satisfied that the Applicants had replaced blinds which had been removed from the property and that they are entitled to recover the cost of those blinds from the Respondents.

33. The Applicants produced a receipt for a replacement sound meter. The First Respondent gave a detailed explanation as to why there was a sound meter in the property and his evidence on that point was unchallenged. The Tribunal was satisfied that the Applicants are entitled to recover the cost of a replacement sound meter from the Respondents.

34. For the reasons set out above, the Tribunal granted an order for payment in favour of the Applicants against the Respondents in the sum of £1,424.89.

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

9 October 2023

Date