

**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/19/1255

Re: Property at 40A Main Road, Fenwick, Ayrshire, KA3 6AL (“the Property”)

Parties:

**Mrs Deborah Noyon McCalliog, Langside, Off Bowling Green Road, Main Road,
Fenwick, Ayrshire, KA3 6AL (“the Applicant”)**

**Mr Stuart McAllister, 5 Shanks Court, Kilmarnock, Ayrshire, KA3 1HS (“the
Respondent”)**

Tribunal Members:

Alastair Houston (Legal Member) and Elaine Munroe (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment of £510.00 be made in favour
of the Applicant.**

1. Background

- 1.1 This is an application under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”). The Applicant was seeking payment of the costs she said were incurred in respect of breaches on the part of the Respondent of the written tenancy agreement between the parties, relating to the condition of the property at the end of the agreement.
- 1.2 The application was accompanied by a copy of the written tenancy agreement, photographs and witness statements. Following directions issued by the Tribunal, documents were also provided by the Applicant relating to the specific costs incurred and all the documents relied upon by the parties were organised into numbered inventories. The Applicant also lodged a video to be relied upon.

2. The Hearing

- 2.1 The Hearing took place on 28 July 2020 and the 12 November 2020 by teleconference. Evidence was heard from both parties and any witnesses on the first day. The second day was fixed to allow the viewing of the video evidence lodged by the Applicant which was facilitated through the Objective Connect platform.
- 2.2 The Applicant was first to give evidence. She advised that she operated a bed and breakfast. She was the sole owner of the property which was the only other property she made available for let. She had purchased the property in 2001 for this purpose. The property had one bedroom, kitchen, living room, utility room and a front porch. Prior to the Respondent taking occupation, the property had been let to approximately four different tenants. Redecoration of the property would take place in between tenants.
- 2.3 The tenancy agreement between the parties began on 13 August 2010 and continued until 5 August 2018. Rent was paid up to this date. The Applicant was friendly with Christine Fulton, who had told the Respondent of the property's availability. The Applicant confirmed that the written tenancy agreement lodged, although only explicitly covering the period 15 October 2014 to 15 April 2015, was representative of the terms and conditions of the agreement between the parties for the duration of the tenancy. Earlier documents had been signed but had not been provided. There was no other document relating to the Respondent's occupation of the property.
- 2.4 Prior to the tenancy beginning, the Applicant had the property decorated. The wooded floor was varnished, the patio power washed and garden trimmed, including hedges. The walls within the entire property had been repainted and the windows cleaned. A new carpet had been fitted in the bedroom. The wooden floor in the hall, kitchen and living room had been sanded before varnishing. Linoleum was covering the floor in the kitchen and utility room. An inventory had been taken. There were not many furnishings included under the tenancy agreement but a bed, bedside table, chair and sofa had been provided. The Photographs and video of the condition of the property would have been taken but these were no longer available. They had not been provided to the Respondent. The inventory was also no longer available.
- 2.5 During the course of the tenancy, there had not been any routine inspection. The Applicant had attended the property on 31 October 2012 and 16 December 2014 for the purposes of renewing the gas safety certificate. The Applicant had noted that the property appeared to be untidy. In 2014, the Applicant had received complaints from neighbours about the condition of the garden, in that it was overgrown. The Applicant referred to photographs taken in 2014 which showed the condition of the garden. In 2014, new windows and a new shower were fitted within the property. The Applicant advised that the Respondent was uncooperative when it came to providing access to the property from 2014 onwards.

Christine Fulton had provided access for the purpose of renewing the gas safety certificate in 2016 or 2017. The Respondent did not want the Applicant in the property. The Applicant never entered without permission.

- 2.6 The Applicant inspected the property on 5 August 2018. She was shocked as to its condition. She had provided the Respondent with opportunities to have the property inspected prior to him leaving but he did not take this. She believed the Respondent to be elusive.
- 2.7 The Applicant advised that the bedroom carpet was stained and odorous. It was covered in dog hair. She confirmed that permission had been given to the Respondent, during the tenancy, to keep a dog within the property. She referred to photographs produced numbered 1/14 and 1/15 on her inventory as showing the condition of the bedroom as of 5 August 2018 and the invoice from J&W Carpets detailed the cost of replacing the carpet.
- 2.8 The Applicant advised that the two sets of curtains within the bedroom and living room had been new at the start of the tenancy. These were now stained and dirty and required to be replaced. The Applicant referred to photographs numbered 1/1, 1/2 and 1/3 on her inventory as showing the curtains. She had not tried to wash the curtains but had been told this would not be possible given the water damage. The receipt from Dunelm showed the cost of replacement. The water damaged was not caused by a leak within the living room but rather, the patio door not being closed properly.
- 2.9 The linoleum in the bathroom appeared to have wine stain. It required to be replaced and the Applicant chose to tile the bathroom. The photographs numbered 1/12 and 1/13 on her inventory showed its condition.
- 2.10 The rug in the living room was new at the commencement of the tenancy. It was covered in dog hair and required cleaning. The receipt from Magna-dry represented the cost incurred.
- 2.11 The oven and hob in the kitchen were approximately 12 to 18 months old at the commencement of the tenancy. The light indicating when they were turned on was broken. No photographs showed this. The oven and hob still worked but the Applicant did not believe them to be safe, given the lack of an indicator light. The hob was rusty and neither it or the oven had been properly cleaned. She did not attempt to have the light repaired and the Screwfix receipt represented the cost of replacement.
- 2.12 The Applicant advised that she and her daughter had spent 16 hours cleaning the property. The Applicant had paid her daughter £10 per hour plus travel expenses to assist with this. Her daughter was a full time

college student. She had not obtained any quotes for professional cleaning but had believed it would cost too much.

2.13 The Applicant confirmed that she had not had any painting or decorating done throughout the tenancy. The Respondent had not requested permission to carry this out and none had been done. The walls were dirty and required painting before the property could be re-let. The Applicant had obtained a quote from D&D Decorators for repainting but, due to the cost, elected to purchase materials and carry this out herself. The receipt from Tradepoint showed the cost incurred. She had required to remove adhesive from the bathroom window and wash the window frame which took two hours in total.

2.14 The Applicant confirmed that she had required to replace the lawn at the rear of the property. The grass had not been maintained and was growing in clumps. The whole lawn required to be reseeded. The photographs numbered 1/21, 1/22 and 1/23 on her inventory showed the condition and the receipt from Newton Means Garden & Landscaping confirmed the cost incurred. The Applicant and her husband has weeded and tidied the garden themselves. They had spent approximately 30 hours doing this. The photograph numbered 1/24 on her inventory showed the condition of the patio.

2.15 A significant amount of rubbish had required to be removed from the property. The shed at the bottom of the garden required to be removed as did a large pile of branches, the mattress provided, the linoleum, the carpet, a filled waste bin, a bucket of dog excrement, three machetes in the shed and the fridge which was broken. The photographs numbered 1/25, 1/26, 1/27, 1/28, 1/29 and 1/32 on her inventory were referred to. The Tradepoint receipt also showed the cost of replacement plants and a broom for cleaning the patio.

2.16 The Applicant advised that a deposit of £375.00 had been taken under the tenancy agreement. This was still held by Safe Deposits Scotland pending the outcome of the present application.

2.17 The Respondent was afforded the opportunity to cross examine the Applicant. In response to a question, the Applicant confirmed that the property would be redecorated after each tenant left.

2.18 The Respondent then gave evidence. He confirmed that the tenancy commenced on 13 August 2010 and that he left the property on 4 August 2018. He referred to the photographs on his inventory and confirmed these had all been taken by him on 4 August 2018.

2.19 The Respondent recalled signing a written tenancy agreement at the commencement of the tenancy. He believed that its terms were the same as that produced by the Applicant dating from October 2014. He confirmed that the property was furnished and that an inventory of

contents had been produced but he no longer had a copy. He accepted that the property had been newly decorated, including varnishing of the wooden floor, however believed that some fixtures and fittings appeared dated. He did not recall if the bedroom carpet or the linoleum appeared to be new.

2.20 The Respondent advised that neighbours did not complain to him during the tenancy regarding the condition of the garden. At times it was tidy, at other times grass could be long. There were no regular inspections by the Applicant. He would receive a telephone call or text message requesting access and, if he was not to be home, could the Applicant let herself in. This started to annoy the Respondent after it happened a number of times and caused a breakdown of the relationship between the parties. The Applicant had brought the complaints by neighbours to his attention in 2014 but he could not recall exactly what was discussed. He had tried to employ a gardener but this was difficult as he required to be home for access as the garden could only be accessed through the property. The garden did not get the attention he would have liked.

2.21 The Respondent advised that the condition of the bedroom carpet was shown in the photographs numbered 5 to 13 on his inventory. He believed it to be in fine condition. He had hoovered it before leaving and his dog was not permitted in the bedroom. He was not aware of any stains or that the condition materially differed from the commencement of the tenancy.

2.22 The Respondent advised that the curtains within the living room were clean when he moved in. They were thin and low quality. He had intended to replace the curtains along with the blind. The rear patio door did not close properly and was never replaced. This led to water ingress which had also occurred in 2012 through the roof, also leading to water damage. He believed he had discussed the issue of the door with the Applicant as it was noted on the tenancy agreement produced.

2.23 The Respondent had cleaned the linoleum in the bathroom before leaving. He believed it had been there longer than his occupation. It was in serviceable condition.

2.24 The Respondent confirmed that the rug in the lounge had been provided under the tenancy agreement. To his knowledge it was not new at the start of the tenancy. He had been told by the Applicant that her intention was to dispose of the rug after the tenancy and not to worry about its condition. He had brushed it before leaving but did not pay any further attention as he thought it would be disposed of.

2.25 The Respondent believed the oven and hob were not newly installed at the commencement of the tenancy. They looked old. He rarely used the oven and hob and did not recall the indicator light being broken.

Photographs numbered 14 to 23 on his inventory showed the condition of the oven and hob when he left the property.

2.26 The Respondent advised he did not carry out any painting or decorating throughout the tenancy. He believed the condition of the property would be as expected after eight years without redecoration. He confirmed he had fitted a sheet of opaque film to the window in the bathroom with the agreement of the Applicant's husband.

2.27 The Respondent advised that he did not believe the Applicant's photographs of the garden to have been taken at the time he moved out. He highlighted a fence which had been replaced and the old fence which had been left on the patio which was absent from the photographs. He accepted that the sum incurred by the Applicant to Newton Means Garden & Landscaping was due as the garden had not been left in a good condition. He had forgotten about the waste left at the back door however he highlighted that the shed was dilapidated when the tenancy commenced.

2.28 Finally, the Respondent photographs numbered 3, 28 and 31 to 24 on his inventory which showed loose slates on the roof which led to water ingress in 2012, the dampness in the living room resulting from this and the back patio door which he said did not close properly.

2.29 In response, the Applicant advised that she was not aware of water ingress in 2014 at the patio door. She confirmed she was aware of that in 2012 and a roofer repaired the defects. She advised that part of the issue was that the Respondent did not heat or ventilate the property adequately as he was not there for periods of time. She had arranged for the garden fence to be taken down between 19 and 20 July 2020. The Respondent disputed that he was away from the property for any length of time, advising he spent almost every night there.

2.30 The Tribunal then heard from the Respondent's witness, Christine Fulton MBE. She confirmed that she had been the Respondent's partner for around 14 years. She had been good friends with the Applicant dating back 20 years. They no longer had a relationship. She had visited the property prior to the commencement of the Respondent's tenancy as her previous partner had resided there. She could not say how often it was decorated.

2.31 Ms Fulton advised that the property would have been immaculate at the commencement of the tenancy as the Applicant had high standards. She did not believe the kitchen appliances were new but could not recall if they were present when her previous partner resided at the property. She was on holiday with the Respondent in 2012 when the water ingress to the living room ceiling occurred. This was not repaired internally before the end of the tenancy however the roof was. She advised that, whenever she visited the property, there was a puddle of water at the

bottom of the patio door. She only had the Respondent's word that this had been reported. She did not go to the property often, perhaps only once or twice per year. She facilitated access for the gas safety certificate inspections and the window replacement.

2.32 She helped the Respondent clean the property before he moved out. They hoovered the bedroom, including under the bed, cleaned the bathroom, mopped and swept floors and washed paintwork. She only noticed a small mark on the bedroom carpet around the size of a 50 pence coin. There was no noticeable smell. She was not aware of any dog hair. The skirting boards had been washed. Whilst the property would have been in excellent condition at the commencement of the tenancy, the condition could not be perfect after eight years. She did not go in the kitchen and was not aware of any issue with the oven and hob. She did not do any work in the garden and did not go out there so could not say what condition it was in. The Respondent would often eat his evening meal at her home and would only ever stay overnight at weekends. She believed the property was in a very good condition given the length of the tenancy, with the exception of the water stained curtains.

2.33 The Tribunal adjourned to enable a solution to the viewing of video evidence to be found. A further hearing took place on 12 November 2020 after parties had the opportunity to consider the Applicant's video via Objective Connect and the parties were afforded an opportunity to make any submission on that date. The Applicant confirmed that she had filmed the video on 5 August 2018. It represented the condition of the property as of that date. It was not professionally filmed. Any repairing issues reported to her were attended to and the written tenancy agreement required the Respondent to return the property in the condition in which it was let, which he had failed to do.

2.34 The Respondent disputed that the video showed the property in a poor condition. The Respondent did not mention any odour on the video. The bath was shown to be clean. The grouting and silicone was not in great condition but that was down to age. The oven and hob were shown to be aged. The video did not focus on the damage to the living room ceiling resulting from water ingress. The Respondent mentioned the patio door on the video and commented that it was not replaced. The curtains in the living room were damaged due to water ingress. Any other departure from the condition in which the property was let was due to wear and tear. There was no decorating carried out during the tenancy and he was not obligated to do so.

3. Findings In Fact

3.1 The parties entered into a tenancy agreement which commenced on 13 August 2010 and ended on 5 August 2018.

3.2 The property was let on a furnished basis.

- 3.3 Under Paragraph 6(b) of the written tenancy agreement the Respondent was required to keep the property clean and in good order and the fixtures fittings and furniture in good condition and to return the property at the end of his occupancy in the same order and conditions as on entry, ordinary wear and tear excepted.
- 3.4 Under Paragraph 6(i) of the written tenancy agreement, the Respondent was required to keep the garden in good order and proper cultivation.
- 3.5 Under Paragraph 6(j) of the written tenancy agreement, the Respondent was not to keep a dog without having first obtained permission from the Applicant.
- 3.6 The property was newly decorated prior to the commencement of the tenancy with the walls having been painted.
- 3.7 The bedroom carpet was fitted immediately before the commencement of the tenancy.
- 3.8 The garden was neat and tidy at the commencement of the tenancy.
- 3.9 The oven and hob were not in a new condition at the start of the tenancy.
- 3.10 The Applicant gave permission to the Respondent to keep a dog within the property.
- 3.11 The property suffered from water ingress due to defects in the roof and at the rear door in the living room of which the Applicant was aware.
- 3.12 As of 5 August 2018, the garden was not in good order and proper cultivation.
- 3.13 As of 5 August 2018, the property was in the same condition as at the start of the tenancy, accounting for ordinary wear and tear.

4. Reasons For Decision

- 4.1 In this application, the Applicant seeks payment of various sums she says are due as a result of breaches on the part of the Respondent of various clauses of the written tenancy agreement relating to the upkeep of the property and garden. The sums sought by the Applicant are summarised by her, along with invoices, at item number 10 on the Applicant's inventory of documents.
- 4.2 The Tribunal based the decision on the oral evidence heard as well as carefully considering all the written materials lodged by the parties. Furthermore, the Tribunal had the opportunity of viewing a video lodged by the Applicant that she took of the property on 5 August 2018.

- 4.3 The Tribunal accepted the Applicant's evidence regarding the condition of the property at the commencement of the tenancy. Her assertion that the property was in excellent condition was supported by the evidence of Ms Fulton. The Tribunal considered the position with regards to each of the different breaches alleged by the Applicant.
- 4.4 Turning firstly to the decorating and cleaning costs claimed, the Tribunal considers it important that parties were in agreement that no decoration was carried out by either of them throughout the property. The Tribunal did not consider it an obligation of the tenancy agreement that the Respondent redecorate. Furthermore, the Applicant's evidence was that she considered it necessary to redecorate after previous tenants since purchasing the property in 2001. Given the length of the tenancy between the parties, it would therefore seem reasonable to the Tribunal that wear and tear would necessitate redecoration after a period of eight years without, given that this had been done a number of times in the nine years preceding the tenancy. The Tribunal did not accept the Applicant's evidence that the property was filthy upon the Respondent leaving. It is clear that, for one reason or another, the relationship between the parties deteriorated, likely from 2014 onwards. The Tribunal believes that this has coloured the Applicant's view of the Respondent and that she has seized upon relatively minor faults with the property which would otherwise be attributable to wear and tear. The photographs and video provided to the party were considered as an objective source and, with a lack of a comparator in the form of photographs from 2010, the Tribunal has been unable to identify defects warranting the description advanced by the Applicant. It should also be noted that the Tribunal did not consider the costs included by the Applicant in respect of her and her daughter's time spent on cleaning would be fully recoverable in the absence of employment of professional cleaners.
- 4.5 Turning to the various items which the Applicant says she required to replace, the Tribunal notes that there were no photographs of the curtains in the bedroom which were allegedly damaged. Those in the living room do appear to have been damaged. The Tribunal accepts the Respondent's position that there was water ingress at the patio door as a result of it not being watertight. The Tribunal notes that this was noted in writing on the copy of the written tenancy agreement lodged by the Applicant with the original application. The Tribunal therefore concludes that the Applicant would have been aware of this and rejects her position that it was simply a case of the door not being shut properly. With regards to the rug and carpet, again the length of the tenancy requires to be noted. Furthermore, the Applicant accepts that permission was given to the Respondent to keep a dog in the property. The presence of a dog could be reasonably expected to contribute to wear and tear in a property. The Tribunal can not accept, on the basis of the photographs and video provided, that these items required replacement but, in any case, given their age the Applicant would not have been entitled to the full costs in the event that they did. The Applicant accepted that the oven and hob were not new at the commencement of the tenancy. She did not

attempt to have any defects repaired and accepted that they still appeared to be in working order. The Tribunal can not accept that the Respondent is liable for the cost of replacement.

4.6 Finally, the Tribunal considered the matter of the garden. The Tribunal noted that the Respondent accepted that he had not maintained the garden and that the sum sought by the Applicant was due in respect of the employment of Newton Mearns Landscaping Company was due. The Tribunal has also noted that waste from the garden was included in the rubbish removal for which the Applicant paid £120.00. As other items, for which the Tribunal has concluded the Respondent was not liable, were also removed, the Tribunal is prepared to allow half the costs, being £60.00. The Applicant also claimed the costs of the time spent by her and family on tidying the garden. This has been quantified at an hourly rate. The Tribunal does not consider these costs to be recoverable in this form, given that there was no evidence to suggest the Applicant or her family members to be professionals in this regard. The Tribunal does however consider that the Applicant could seek compensation for the inconvenience suffered as a result of the contractual breach admitted by the Respondent. Accordingly, the Tribunal is prepared to award the notional sum of £100.00 in respect of this.

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.

Alastair Houston

12 November 2020

Legal Member/Chair

Date