



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/20/2574

Re: Property at Langbank Cottage, Main Road, Langbank, PA14 6XR (“the Property”)

Parties:

Mr Derek Miller, 9 Umachan, Erskine, PA8 7FG (“the Applicant”)

Mr Davide Cattaneo, Ms Pauline McGahey, Flat 0/1, 31 Bank Street, Greenock, PA15 4PJ; 40 Sir Michael Street, Greenock, PA15 1PL (“the Respondents”)

Tribunal Members:

Ms H Forbes (Legal Member) and Mr M Scott (Ordinary Member)

Decision

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 Applicant in the sum of £4473.

Background

1. This is an application received in the period between 11th December 2020 and 8th February 2021. The application is made in terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”). The Applicant is seeking an order for payment in respect of rent arrears and cleaning, carpeting and decorating costs. The costs arise from a tenancy agreement between the parties that commenced on 25th January 2019, at a rent of £875 per month. A copy of the private residential tenancy agreement was lodged, together with invoices for the cost of cleaning, carpeting and decorating. A rent statement and photographs were also lodged. The Applicant was claiming the sum of £600 in rent arrears and £6062 in respect of cleaning costs, carpeting and decorating.
2. By email dated 29th March 2021, the Respondent, Ms McGahey, lodged written representations.

3. By email dated 23rd April 2021, written representations were lodged on behalf of the Respondents.
4. By email dated 12th May 2021, written representations and photographs were lodged on behalf of the Applicant.
5. Case Management Discussions took place on 6th April, 13th May and 15th June 2021 by teleconference call. The case was set down for a hearing to take place on 2nd August 2021
6. By email dated 22nd July 2021, the Applicant's representative lodged a further inventory of productions.
7. A hearing was set down for 2nd August 2021 to take place by video conference. The Applicant was in attendance and represented by Mr Marcus Whyte, Solicitor. The Respondents were not in attendance and were represented by Mr Shaun McPhee, Solicitor. Mr McPhee informed the Tribunal that Mr Cattaneo was working abroad and Ms McGahey had mistakenly diarised the hearing for the following day and could not be available. The hearing was adjourned.

The hearing

8. A hearing took place by video conference on 17th September 2021. The Applicant was in attendance and represented by Mr Marcus Whyte, Solicitor. The Respondents were not initially in attendance, and were represented by Mr Shaun McPhee, Solicitor. Mr McPhee informed the Tribunal that Mr Cattaneo was off-shore. Ms McGahey attended shortly after commencement of the hearing.

The Applicant's evidence

9. The Applicant said he lived in the Property from 2007 to 2018 with his family. In 2018, he put the Property on the market. The Property had been fully refurbished and upgraded for sale. The Property comprises two older buildings which were combined into one three-bedroomed property with a large living room with two staircases.
10. In January 2019, the Respondents indicated they wished to rent the Property and a tenancy commenced on 25th January 2019, ending on 25th July 2020. The monthly rent was £875. Mr Cattaneo wished to pay rent upfront in 6-monthly instalments. He paid £6125 in January 2019, which comprised six months' rent and a deposit of £875. A further payment was made in July 2019 in the sum of £4950, which was £300 short of the actual rent for six months. The Applicant said he tried to discuss this with Mr Cattaneo but, due to the language barrier and Mr Cattaneo's attitude, he did not pursue this. A further payment was made in January 2020 in the sum of £4850, which was £400 short. It was the Applicant's position that no reduction in rent had been agreed. Although the shortfall was £700, the Applicant was seeking a

payment of £600 rent arrears. The Applicant said there were outstanding fuel bills when the tenancy ended.

11. Taken through the tenancy agreement by his solicitor, the Applicant said the Respondents had breached several of the terms of the agreement:

Clause 4

12. The Applicant said the Respondents blocked pipes in the Property. He is a plumber and was able to clear the pipes.

Clause 5

13. There was nicotine damage throughout the Property caused by Mr Cattaneo's smoking. There were cat urine stains on the carpets. The Applicant said he had not given permission to the Respondents to smoke. If he had been asked, he would not have given permission.

Clause 6

14. There were nail marks and scratches on the wooden floors, cracked mirrors and other broken items.

Clause 15

15. No maintenance was carried out to the external areas of the Property. The Applicant described it as 'a disaster'.

Clause 16

16. The Respondents failed to ask for permission to keep a cat in the Property. The cat urinated on the carpet, causing an awful smell, and there was faeces in an upstairs cupboard.

Clause 17

17. The Respondents advised a faulty television. They did not advise of a faulty Dyson Airblade or the damaged carpets.

Clause 20

18. The keys were not returned at the end of the tenancy. There was an incident where Mr Cattaneo became aggressive and the police were involved. Mr Cattaneo was charged. The locks had to be changed.

Clause 22

19. The Respondents carried out no cleaning at the end of the tenancy. The Applicant said he spoke to both Respondents about this. Ms McGahey said she

would be back to give it a quick once over. It needed much more than that. The Property was left in an unbelievable state. He was astonished to see how bad it was. The cleaning costs were £800.

Clause 25

20. The Respondents hung snakes and animal skins on the walls using nails. This caused damage to the walls.

Clause 31

21. The Applicant said he received something in the post weeks or months after the tenancy ended, but received no proper notice of intention to leave at the time.

Clause 40

22. The windows were not cleaned and were left in a very dirty condition, and had to be cleaned. The Applicant was not pursuing the costs of this.

Video and photographs

23. The Applicant spoke to a video of the Property which was made a week before the tenancy commenced.
24. The Applicant spoke to photographs that purportedly showed the extent of smoke and nail damage to the downstairs walls and paintwork. There were photographs of the cat faeces in the upstairs cupboard, and staining to the carpet at the bottom of both stairwells, and in the downstairs bedroom. The Applicant had tried to clean the carpets without success and they had to be changed. The carpets were new at the start of the tenancy, as indicated by an invoice from January 2019 for carpet fitting. The cost of recarpeting was £276, as supported by an invoice dated 24th August 2020. The Applicant was referred to a written statement from the carpet fitter, which the Applicant had asked him to provide. The carpet fitter had told him the carpet could not be cleaned.
25. There were photographs of a cracked sink, a broken drawer, wooden floor damage, and external wall damage, the costs of which the Applicant was not pursuing. It was his position that the Respondent, Mr Cattaneo, damaged every panel on his own car, as well as the external wall, due to poor driving. He also damaged an external gas box.
26. The Applicant said the woodwork had to be stripped back and painted several times after the tenancy ended. There was a large amount of preparatory work required. The Property had been decorated about six months before the tenancy commenced. The Applicant was referred to a written statement from the decorator, indicating the amount of work required and carried out.

Cross-examination of the Applicant

27. Asked by Mr McPhee whether there was an agreement between the parties that the rent would be reduced if paid up-front, the Applicant said there was no agreement. He had tried to discuss this, but the language barrier meant he could not get through to Mr Cattaneo. Mr Cattaneo had asked that the rent be reduced to £690 per month, then paid £4850 in January 2020. The Applicant said he tried to speak to Ms McGahey about this but she was taking nothing to do with it, and speaking to Mr Cattaneo was like speaking to a brick wall. The Applicant said he did not smoke.

Ms McGahey's evidence

28. Ms McGahey said the parties were on friendly terms initially and the Applicant was welcome in the Property. He and Mr Cattaneo talked business and came to a deal after discussion to reduce the rent. They shook on it and the Applicant commented that Mr Cattaneo drove a hard bargain. Mr Cattaneo was responsible for household finances. Asked why Mr Cattaneo had paid £4950 in January 2020, Ms McGahey said she assumed that was the arrangement that was reached. The Applicant did not raise the issue of the shortfall in rent.

29. Ms McGahey said the Applicant was often in the house. They enjoyed his company. He was aware that Mr Cattaneo smoked. He only smoked in the living room. Ms McGahey did not smoke.

Adjournment of hearing

30. At this point, Mr Cattaneo appeared on screen, requesting to speak. Contrary to the information provided to the Tribunal, Mr Cattaneo was present in the same room as Ms McGahey. Mr McPhee said he was unaware that Mr Cattaneo was in the country and with Ms McGahey. He requested an adjournment to consider matters. Upon reconvening, Mr McPhee informed the Tribunal that he required further time to consider the professional practice issue that had arisen and to consider his position. The hearing was adjourned.

Further procedure

31. A further hearing was set down for 17th November 2021.

32. By email dated 26th October 2021, a solicitor newly appointed to represent the Respondents requested a postponement of the hearing set down for 17th November 2021, to allow further time to prepare. The postponement was granted.

33. By email dated 14th December 2021, the Respondents' solicitor indicated that they were no longer representing the Respondents.

The hearing

34. A hearing took place by video conference on 16th December 2021. The Applicant was in attendance and represented by Mr Marcus Whyte, Solicitor. The Respondents were in attendance. Ms McGahey indicated that Mr Cattaneo would take the lead in giving evidence.

Evidence of Mr Cattaneo

35. Mr Cattaneo said he is a 65 year old consultant who works in Africa. He said the parties had reached a verbal agreement that the Respondents would rent the Property. He required hip surgery at the time of moving in. Mr Cattaneo paid the rent 6 months in advance. He had over 2000 books and valuable oil paintings, carpets and furniture. The tenancy agreement was signed two days after Mr Cattaneo had his hip operation. He was in bed at the time.

36. Mr Cattaneo said the Applicant knew that he smoked. He visited the Property many times and smoked with Mr Cattaneo. He sold Mr Cattaneo tobacco. Mr Cattaneo said he smoked ten cigarettes daily. It was his position that his books, paintings and animal skins absorbed most of the cigarette smoke over a period of eighteen months, and only a very small area of wall was exposed, possibly around two and a half square metres. Even if he had smoked more, the damage would not be serious. Mr Cattaneo said the Applicant saw the cat when he visited. There was no discussion about the cat or the smoking.

37. The relationship with the Applicant deteriorated fifteen months after the tenancy commenced, when the Applicant decided he was going to build in the garden of the Property. He began to carry out noisy works in the garden and the Respondents decided to move out. Upon moving out, the rent and bills were paid up to date.

38. Mr Cattaneo said he and the Applicant met at the Property after the Respondents' belongings had been moved. The Applicant asked for the keys to the Property. Mr Cattaneo said he gave one key back but refused to return the other until his deposit was repaid. There was an argument.

39. Mr Cattaneo denied there was damage to the Property. The wooden flooring was not scratched. Any marks were only in the wax, not in the actual wood. It was his position that the cat faeces was planted by the Applicant. He said the photographs showed the faeces was beside a door. If that had been the case, it would have been stepped in during the removal. If there was any damage, it was his position that the deposit of £850 would more than cover it.

Cross-examination of Mr Cattaneo

40. Mr Cattaneo said the Property was in normal condition at the start of the tenancy. It was not brand new. He was keen to move in as he was in pain. He was willing to buy the Property but that did not work out. The Applicant asked for rent upfront. Mr Cattaneo denied that the Applicant had reduced the rent

from what was originally advertised. Ms McGahey knew the Applicant and they had a discussion about the tenancy. Mr Cattaneo said the Applicant used to come to the house. They made a gentleman's agreement to reduce the rent after six months. Mr Cattaneo could not remember how much the reduction was, but it was verbally agreed. He questioned why the Applicant had not complained about this until after the tenancy ended.

41. Referred to a form AT5 that had purportedly been signed by parties on 26th January 2019, Mr Cattaneo said it was a fake. The tenancy agreement was signed a month after the Respondents moved into the Property. As he was just out of hospital, Mr Cattaneo did not read the tenancy agreement.
42. Mr Cattaneo said the Respondents sent a letter by recorded delivery to the Applicant giving notice of their intention to leave three months before the end of the tenancy. He denied that the Respondents left without informing the Applicant and without giving him an opportunity to inspect the Property. Mr Cattaneo said he and the Applicant met and inspected the Property. There was no damage. The Applicant was aware of the smoking, and there was no more than two and a half square metres of free surface that could be affected by smoke. The whole house did not require redecoration. It was his position that the photographs did not show smoke damage. All that was required was to clean the walls. He said another tenant had problems with the Applicant.
43. Mr Cattaneo said the nails used to hang the animal skins on the walls only made small holes. He was keen not to damage the walls. Only the floor wax was scraped. There was no damage to the wood. The cat had not damaged the carpet. It used a tray. It was his position that the Applicant damaged the carpet by applying bleach. The account of the carpet fitter was untrue. There was no smell of urine. The Applicant put faeces on the carpet.
44. Mr Cattaneo said he only smoked in the living room. When he was in bed after his operation, he did not smoke, and used a nicotine spray. It was his position that the decorators were just trying to make money by using stain block. It was his books that were damaged, not the walls. The windows were regularly opened and he hired someone to clean the windows.
45. Mr Cattaneo said any damage to the Property took place after the Respondents left. He hired someone to do the gardening. It was not his car in the photographs lodged by the Applicant. He could not remember what kind or colour of car he had. The car was always left outside the gate. He had not caused any damage to external garden walls.
46. Mr Cattaneo denied that the Applicant was never in the house. He was there every week, selling Mr Cattaneo tobacco. The Applicant was aware of the condition of the Property and aware there was no damage to the Property.
47. Describing the meeting between himself and the Applicant at the end of the tenancy, Mr Cattaneo said there was no discussion about damage or cleaning. Only the key was discussed. There was no need for a deep clean.

48. It was Mr Cattaneo's position that none of the clauses of the tenancy agreement had been breached. If any cleaning or decorating was required, it was more than covered by the tenancy deposit.
49. Responding to questions from the Tribunal, Mr Cattaneo said he and the Applicant agreed a discounted sum. There was no complaint from the Applicant and the Respondents were unaware that he was claiming there was unpaid rent until they received the application in this case.
50. Responding to questions from the Tribunal, Mr Cattaneo said he and the Applicant met and inspected each room after the furniture and belongings had been moved. There was no faeces on the floor. It was two days after the Respondents moved out. Only the key was discussed.
51. Asked whether he accepted the condition of the Property as shown in the photographs lodged on behalf of the Applicant, Mr Cattaneo said they were taken later.

Further evidence of Ms McGahey

52. Ms McGahey said everything was relaxed at the start of the tenancy. There was no inventory. Some items were already damaged when the tenancy started, including the drawer.
53. It was Ms McGahey's position that she would have gone back to clean the Property after moving out, but she felt unsafe and did not want to get into an argument with the Applicant.

Cross examination of Ms McGahey

54. Ms McGahey said she did not read the tenancy agreement. It was late March before it was provided by the Applicant. When signing it, she asked him whether she should date it on the date they moved in and he said yes. Although Mr Cattaneo said it was one month later, that was because he was only just out of hospital.
55. There were no issues in communicating with the Applicant. They were on friendly terms. The Respondents had not rented before and were naïve. They did not know the correct protocol when renting. She sent a text to the Applicant to notify him that the Dyson Airblade was not working.
56. Ms McGahey said the Respondents printed out an email and sent it by recorded delivery to the Applicant notifying him of their intention to leave. She thought this was sent around eight weeks before the end of the tenancy. They left on 21st July 2020, which was before the tenancy end date. They left because the relationship had broken down. Her nephew had been carrying out works in the garden. The works were noisy. The Applicant made threats. All communication was then made through her, by text or phone. There was an issue with the utility

bills at the end of the tenancy but it was sorted out and the Respondents paid all that was due.

57. Ms McGahey said the Applicant locked the Respondent in on the day they met at the Property after the tenancy ended. The Applicant's wife phoned her at the time.
58. Ms McGahey accepted that the Property required cleaning, some carpeting and some redecoration. She was unable to put a price on the work required, but accepted the invoices put forward for carpeting and cleaning. She did not accept the redecoration costs. She described the costs as 'incredible' and said the Applicant should have shopped around.
59. Ms McGahey accepted there was some smoke damage but could not say if it affected all of the ground floor. There were holes in the walls and the floor was scratched. It was her position that there were no urine stains on the carpet, although she suggested the cat may have urinated during the removal. It was not in the habit of fouling in the Property. The Respondents had looked after the garden; her nephew had carried out gardening works and cleaned the windows.
60. It was Ms McGahey's position that she would have gone back to clean the Property but the Applicant's threats prevented her from doing so.
61. Ms McGahey accepted she was responsible for unpaid rent, but reiterated her evidence that a discount had been negotiated, pointing out that the Applicant had not raised this issue during the tenancy.
62. Responding to questions from the Tribunal regarding the alleged agreement to reduce the rent, Ms McGahey said she had witnessed the agreement but had not heard the amount agreed.
63. Responding to questions from the Tribunal regarding the call from the Applicant's wife on the day he and Mr Cattaneo met at the Property, Ms McGahey said she received a call from the Applicant's mother in law, who is a friend of hers. She was asked to go to the Property as there had been an argument and Mr Cattaneo had been locked in. The Applicant was refusing to open the door until his key was returned. The Applicant came on the phone and said it was unacceptable that Ms McGahey was not present. He was shouting and bawling. Ms McGahey was on her way to work. She told the Applicant to call the police. She was unaware of how Mr Cattaneo got out of the Property.
64. Responding to questions from the Tribunal regarding the alleged threats made by the Applicant that prevent Ms McGahey from returning to clean the Property, she said the Applicant called her on the Wednesday after they left the Property. He had been to the Property and said he'd seen the damage. She said she was coming back the following day to clean, and the Applicant said it needed an industrial clean. He was screaming, swearing and threatening.

65. Asked why she had not cleaned the Property at the time of leaving, Ms McGahey said she was sore the following day and was going to go up the next day with her cousin. They would have considered then whether they needed contract cleaners. There was still a few days of rent paid, which would have allowed this.

Further evidence from Applicant on new matters

66. The Applicant said the lease was set up before the Respondents moved in.

67. The Applicant said he met Mr Cattaneo at the Property after the Respondents had moved out, in order to get the keys back. There was an argument. He told Mr Cattaneo he would not return the deposit. Mr Cattaneo shrugged his shoulders and refused to give the key back. They met in the garden and only went into the living room, where the Applicant pointed out the damage. Mr Cattaneo was not interested in anything but the deposit.

68. Responding to questions from the Tribunal regarding the fact that the tenancy started on 25th January 2019 yet the form AT5 was signed on 26th January, the Applicant said it was possible the AT5 had been signed a day late.

Cross-examination of the Applicant

69. Asked by Mr Cattaneo where they had met after the tenancy ended, and for how long, the Applicant said they met at the side of the garden, then they walked into the house. Mr Cattaneo had shouted and lifted his stick. Asked why he had locked everyone in the Property, the Applicant said that was a total fabrication.

Summing up for the Applicant

70. Mr Whyte submitted that there was outstanding rent and damage to the Property. In terms of the tenancy agreement, there was a responsibility to pay £875 per month rent. The Respondents reduced this without the agreement of the Applicant and £600 was due in outstanding rent.

71. The Respondents breached several clauses of the tenancy agreement by failing to keep the Property in good condition and repair. No matter when the tenancy agreement was signed, or whether it was read, it was agreed by parties that it had been signed.

72. Both Respondents accepted there was some smoke damage. Ms McGahey was unable to state the extent and Mr Cattaneo said it was two and a half square metres. Ms McGahey accepted the carpet was damaged and cleaning was required. The photographs and video indicated the condition before and after the tenancy. All the damage was attributable to the Respondents. The written statements from the carpet fitter and decorator support the Applicant's position. All sums sought are reasonable. There was no evidence from the Respondents to show the sums sought are not reasonable.

73. Mr Whyte submitted that Mr Cattaneo's evidence was incredible and unreliable. The Applicant's evidence was to be preferred. It was given in a full, clear and unwavering manner.

74. Mr Whyte confirmed that the Applicant is seeking the sum of £5073. The decorator's invoice included two areas that should not have been included – the upstairs bedroom and toilet. These were not damaged by the Respondents. The Applicant had deducted the sums for those areas and the deposit, which totalled £1589.

Summing up for the Respondents

75. Mr Cattaneo said the tenancy commenced on 25th January 2019 when the money was transferred. The tenancy agreement was signed two months later. All payments were agreed and the Applicant did not ask for the outstanding money.

76. The Applicant was aware that Mr Cattaneo was smoking. He was aware of the cat.

77. There was not £5000 worth of damage to the Property. All that was required was brushing out and washing. The pictures were taken after the Respondents left. It was all a bunch of lies. The Respondents are honest people who paid everything that was required. They were not partying in the Property. They did everything in good faith.

78. Ms McGahey said she had loved the Property, which was quirky. She had admired it for many years. She was disappointed the situation had ended up in this way.

Submissions on expenses

79. Mr Whyte made a submission for expenses in terms of Rule 40, stating that the Applicant and his representative had attended all hearings, whereas the Respondents had not, and this had caused significant delays. Ms McGahey had failed to attend the hearing set down for 2nd August 2021, which led to an adjournment. Mr Cattaneo had displayed a devil-may-care attitude throughout, including appearing suddenly at the hearing on 17th September 2021 which led to adjournment of the hearing. A hearing set down for 17th November 2021 had to be postponed because the Respondents' new solicitor sought a postponement which was only required because of the behaviour of the Respondents. The Applicant has had to attend after working night shift.

80. Ms McGahey apologised to the Tribunal for the miscommunication that led to her failing to attend on 2nd August 2021. She said she got the dates mixed up and had not intended to waste the Tribunal's time. In relation to 17th September 2021, she said she did not have an opportunity prior to the hearing to inform her solicitor that Mr Cattaneo was present.

81. Mr Cattaneo said there had been no unreasonable behaviour by the Respondents. He had also incurred legal costs.

Findings in Fact and Law

82.

- (i) Parties entered into a private residential tenancy agreement in respect of the Property commencing on or around 25th January 2019, at a rent of £875 per month.
- (ii) A deposit of £875 was paid by the Respondents to the Applicants at the start of the tenancy.
- (iii) The Respondents paid the first six months' rent in advance in a lump sum of £5250.
- (iv) After discussion between Mr Cattaneo and the Applicant prior to 26th July 2019, agreement was made to reduce the rent.
- (v) Two further advance payments of six months' rent were made by the Respondents to the Applicant in July 2019 and January 2020.
- (vi) Mr Cattaneo smoked tobacco in the downstairs area of the Property.
- (vii) The Applicant was aware that Mr Cattaneo smoked tobacco in the Property.
- (viii) The tobacco smoke and/or nicotine caused damage to the walls and paintwork in the downstairs area of the Property. The damaged areas required to be repaired and redecorated.
- (ix) The Respondents hung pictures and animal skins on the wall of the Property. The nails used to hang these items caused damage to the walls of the Property.
- (x) The Respondents kept a cat in the Property.
- (xi) The Applicant was aware that there was a cat in the Property.
- (xii) At some time during or at the end of the tenancy the cat fouled on the carpets causing urine contamination and depositing faeces. The bedroom carpet and two areas at the bottom of each stair in the living room required to be replaced due to the fouling.
- (xiii) The tenancy ended on 25th July 2020.
- (xiv) There was no rent lawfully due at the end of the tenancy.

- (xv) The Respondents did not clean the Property at the end of the tenancy. The Property required a deep clean.
- (xvi) The Respondents did not return the keys to the Property to the Applicant.
- (xvii) The Respondents breached clauses 20, 22 and 25 of the tenancy agreement.
- (xviii) In terms of clause 5 of the tenancy agreement, the Respondents are responsible for the cost of any damage or decoration resulting from deterioration of the interior of the Property caused by nicotine/tobacco smoke.
- (xix) In terms of clause 16, the Respondents are liable for any damage caused by keeping a pet in the Property.
- (xx) The Applicant is entitled to restitution for damage caused in breach of the tenancy agreement.
- (xxi) There was no unreasonable behaviour in the conduct of the case on the part of the Respondents.
- (xxii) No expenses are awarded in favour of the Applicant.

Reasons for decision

83. The Tribunal found all parties to be credible and reliable in the main. However, the Tribunal preferred the evidence of the Respondents in regard to the agreement reached to reduce the rent. The Tribunal was not persuaded by the Applicant's evidence that a language barrier prevented him from taking this matter further. The Tribunal found, on the balance of probabilities, that agreement was reached on a reduced rent. The Tribunal took into account the actions of the Applicant in accepting the reduced rent on two occasions and failing to do anything over the period of a year to indicate that he considered the Respondents to be in breach of the tenancy agreement by failing to pay rent lawfully due. This tended to support the finding that an agreement was made. The Tribunal found there to be no rent lawfully due by the Respondents.
84. The Tribunal found that the Applicant visited the Property regularly and was aware that there was a cat in the Property. Again, the Applicant failed to take any action to indicate that he considered the Respondents to be in breach of the tenancy agreement by keeping a pet.
85. The Tribunal accepted the evidence that the Property required considerable redecoration after the tenancy ended. No compelling evidence was put forward to support Mr Cattaneo's assertion that ten cigarettes a day for a

period of 18 months could not cause the alleged damage, and that most of the damage was to his belongings. No compelling evidence was put forward to support the assertion that the decorating work was overpriced. While the cost was high, this is a large property and there was a considerable amount of work carried out over a lengthy period, including the application of stain block to all the downstairs ceilings, which would indicate considerable nicotine staining. There was damage to the wallcoverings, which required to be replaced in the living room and bedroom, and a considerable amount of painting was required. Even if Mr Cattaneo's assertion that his belongings absorbed most of the nicotine, leaving only a small area of wall to be exposed, each room would require to be redecorated in full at the end of the tenancy.

86. The Tribunal accepted the evidence that a deep clean of the Property was required. While the Tribunal would have preferred to have seen a more detailed breakdown or to have heard evidence to justify the cost of the deep clean, including the number of hours and type of work required, the Tribunal took into account that Ms McGahey accepted in cross-examination that the work was required and the cost justified. The Tribunal was not persuaded that Ms McGahey could not have returned to the Property to clean it due to aggression on the part of the Applicant. There was no justification for the Respondents failing to carry out any cleaning. The Tribunal preferred the evidence of the Applicant that there was no room-by-room inspection of the Property at their meeting, and that Mr Cattaneo was only interested in the return of the deposit. Perhaps if he had shown more interest in the state of the Property at that meeting, the extent of damage and work due would have been obvious to him. Ms McGahey seemed to take a very relaxed view of the urgency of the situation, stating that she intended to return several days after the Property was emptied, and may have commissioned cleaners to carry out cleaning.
87. The Tribunal accepted the evidence that the bedroom carpet and two areas at the bottom of the stairs in the living room required replacement, due to fouling by the Respondents' cat. The Tribunal noted that Ms McGahey agreed that replacement of the carpet was required.
88. The Tribunal made no findings in relation to the date of signing of the tenancy, whether furniture was damaged during the tenancy, or whether notice to leave was given by the Respondents.
89. The Tribunal considered the motion for expenses made by Mr Whyte. Rule 40 provides:
 - (1) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party or parties to unnecessary or unreasonable expense.

- (2) Where expenses are awarded under paragraph (1), the amount of the expenses awarded and recoverable under that paragraph shall be the amount of expenses required to cover any unnecessary or unreasonable expense incurred by the party or parties in whose favour the order for expenses is made.
90. The Tribunal process has always been intended to be cost free as far as participants are concerned in order not to discourage applications. Awards of expenses in the First-tier Tribunal are a departure from that general principle and should only be made rarely and in clear cases where unreasonable behaviour has been made out to the satisfaction of the Tribunal.
91. The Tribunal did not find that there had been unreasonable behaviour by the Respondents in the conduct of the case. It was unfortunate that Ms McGahey failed to attend at the hearing on 2nd August 2021, but this was due to human error rather than unreasonable behaviour.
92. Mr Cattaneo's failure to attend case management discussions and hearings, which appeared to be due to his work patterns, was not considered by the Tribunal to be unreasonable behaviour. This failure to attend did not lead to any delays, nor did it put the Applicant to any unnecessary or unreasonable expense.
93. On 17th September 2021, while the Tribunal was concerned at the behaviour of the Respondents in (a) failing to inform their agent of the correct position; and (b) failing to indicate that Mr Cattaneo was present during the hearing, while allowing the Tribunal to remain under the impression that he was out of the country, there was no compelling evidence of unreasonable behaviour on the part of the Respondents that put the Applicant to unnecessary or unreasonable expense. The Tribunal accepted the explanation put forward by Ms McGahey that she had not had time to inform her solicitor of the actual position on the day. The Tribunal took into account that, at the commencement of the hearing, Mr Whyte informed the Tribunal that he had a court hearing that afternoon, and would have to be away at 2pm. The hearing had been set down for the full day and the Tribunal expected to have a full day in which to hear evidence. This would not have been possible due to Mr Whyte having to leave early. The hearing was brought to an end at the sudden appearance of Mr Cattaneo at or around 12 noon. It is likely that the hearing would have adjourned for lunch at or around 1pm, therefore, the time lost, due to the Respondent's actions, was approximately one hour.
94. There was no evidence before the Tribunal to link the postponement of the hearing set down for 17th November 2021 to any unreasonable behaviour of the Respondents. Furthermore, there was no evidence of any unnecessary or unreasonable expense caused to the Applicant due to this postponement.
95. In all the circumstances, the Tribunal found that the Respondents are liable to the Applicant in the sum of £4473.

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.

Helen Forbes

Legal Member/Chair

20th December 2021
Date