Housing and Property Chamber
First-tier Tribunal for Scotland

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/20/2644

Re: Property at 40 Upper Craigour, Edinburgh, EH17 7SF ("the Property")

Parties:

Mrs Julie Dixon, 40 Upper Craigour, Edinburgh, EH17 7SF ("the Applicant")

Miss Judith Toth, 7/14 Western Harbour Midway, Edinburgh, EH6 6LE ("the Respondent")

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Applicant was entitled to an order for payment by the Respondent in the sum of £770.00.

Background

1. By Application dated 22 December 2020 the Applicant applied to the Tribunal for an order for payment in respect of alleged damage to the property arising out of the Respondent's occupancy under a short assured tenancy. The Applicant provided copy receipts and credit card and bank statements in support of the application.

2. By Notice of Acceptance dated 23 December 2020 a legal member of the Tribunal with delegated powers accepted the application and had it conjoined with two other cases involving the same parties in which the Applicant was the Respondent under case references FTS/HPC/PR/20/1719 and FTS/HPC/CV/20/1832 and the application was continued to a Case Management Discussion ("CMD").

3. The Respondent submitted written representations in response to the Applicant's claim by email dated 13 January 2021.

4. A CMD was held by teleconference on 19 January 2021 conjoined with case references CV/20/1832 and PR/20/1719. In light of the disputed issues in the other conjoined cases and the wish of the parties to have all the cases heard together the case was adjourned to a full hearing of the Tribunal.

5. The Applicant by email dated 16 February 2021 submitted further written representations to the Tribunal.

6. The Respondent by application under case reference FTS/HPC/CV/21/0687 submitted a further application to the Tribunal and this was accepted by a legal member and conjoined with the three existing applications and assigned to the same hearing.

7. By email dated 7 April the Respondent submitted written representations in response to the Applicant's claim.

8. The Applicant's representative, Mr Neil Dixon submitted further written representations by email dated 31 May 2021.

The Hearing

9. A hearing in respect of all four conjoined applications was held by teleconference on 3 June 2021. The Applicant attended personally supported by Miss Michelle Cooper. The Respondent attended personally and was represented by her husband Mr Neil Dixon.

10. At the commencement of the hearing Mr Dixon confirmed that his wife would not have raised the application were it not for the cases against them that had been raised by the Respondent.

11. Mr Dixon was asked by the Tribunal to explain the basis on which the various heads of claim had been calculated in the Calculation of Loss submitted to the Tribunal. Mr Dixon said that the figure of £550.00 for loss of income or personal usage was based on the premise that if the property had been returned in an acceptable condition the Applicant would have been able to use it herself rather than having a 130-mile round trip from her home. He said that although it had taken three months to restore the property the sum claimed had been restricted to one month's rent to reflect the fact that professionals could have been instructed and would have taken less time. He explained that in the past when the flat had been empty the Applicant had used it instead of commuting every day. He said that previously the property had been let to friends and family and that this had been the first occasion it had been let to a stranger. He said that it had needed to be gutted from top to toe and that even a squad of professionals would have found it difficult as it was not fit for human habitation. He said he found it difficult to work in it. Mr Dixon went on to say that the hours claimed were what he had spent and the hourly rate was what he estimated a handyman

might charge. He said that if the Tribunal thought the hourly rate was too high then that was a matter for the Tribunal. Mr Dixon confirmed the two charges of £25.00 had been levied by Edinburgh City Council for collecting refuse and furniture from the property. He said he had charged a further £20.00 for each trip he had made to the recycling centre to cover the time spent as well as cleaning his car afterwards.

12. Mr Dixon said that the underfloor heating had to be replaced as it was not working. He thought that it had been damaged as a result of the tiles being broken. He said the Respondent had caused the damage to the tiles.

13. With regards to the bathroom tiles, Mr Dixon said there had not been the same damage. The problem was with the grouting as could be seen from the photographs submitted to the Tribunal. Mr Dixon said that the grouting was unsalvageable and beyond cleaning. He said that the tiles needed to be removed. He did not consider regrouting as there were a lot of mosaic tiles and it was not viable to scrape out the existing grout and replace as it would have been too time consuming.

14. Mr Dixon explained that he had obtained a professional quote for carrying out the work from Cargill Property Maintenance and apportioned this between the two different heads of claim for replacing flooring and redecoration rather than claiming for his own time as this had been challenged by the Respondent at the CMD. Mr Dixon went on to say he had then applied the ARLA betterment formula as suggested by the Respondent to arrive at a final figure for the repairs.

15. Mr Dixon said that he had replaced the shower screen as the glass although not broken had become detached. The fixing was split and it could not be repaired.

16. With regards to the sofa, Mr Dixon said that the Applicant was not claiming for other items and there was not an inventory. The photos submitted by the Respondent showed that during the tenancy the sofa was in reasonable condition. It was not in a good condition at the end of the tenancy. The Applicant had obtained the cost of a similar Thomas Lloyd Chesterfield sofa and discounted it by 75% and then further discounted it to arrive at the figure claimed. With regards to the armchair, Mr Dixon accepted it was nearing the end of its life and was prepared to forgo this part of the claim.

17. Mr Dixon said he had not provided receipts for the paint used as he had already had paint that he could use.

18. In response to a query from the Tribunal Mr Dixon advised that he was an accountant by profession but had 25 years of DIY experience.

19. Mr Dixon went on to say that the tiles in the kitchen floor were smashed and not repairable and referred the Tribunal to the photos submitted. The tiling was not salvageable. He said that following the Applicant entering the property on

10 August 2020 she found it to be in a terrible condition and provided the Respondent with a list of issues that need attention. He said the Applicant gave the Respondent an opportunity to put things right or the cost would come off the deposit.

20. Mr Dixon said that he had then decided to carry out the cleaning and repairs himself. He had laid laminate flooring in his own kitchen ten years previously and it was still in good condition. He had not intending suing for damages and would not have done so were it not for the cases raised against the Applicant by the Respondent.

21. The Respondent told the Tribunal that she had arranged for a cleaner to attend at the property about two weeks before the end of the tenancy. She had spent 2-3 hours and had done a thorough clean. The Respondent said that when she and Miss Cooper left the property it was in a pretty good condition and referred the Tribunal to the photographs that showed the shiny bathtub. The Respondent said that she and Miss Cooper had done the best they could in the circumstances given they had no hot water.

22. The Respondent accepted there had been damage to the laminate flooring principally in areas close to the bathroom. She speculated that there could have been water damage from the bathroom. She said any damage had not been caused deliberately. The damage had occurred in a high traffic area and over time had become worn. There was one place where a hole had been caused by rot. She did not think moving the armchair would have damaged the flooring. She did not think her dog had caused any damage to the flooring although she accepted he had damaged the leg of the armchair.

23. The Respondent accepted the kitchen tiles were not broken when she moved in but that they had broken just by walking on them. She said nothing had been dropped on them. It had been wear and tear. She said she had no idea about the underfloor heating not working. She said it had been working when she switched it off in the Spring of 2020.

24. The Respondent said she had not noticed the grouting getting a bit yellow but had seen the grouting was cracking around the bath tub but had not thought to contact the Applicant. She said she had stayed in flats previously of varying quality and expected some to be better than others. The Respondent went on to say the shower screen had broken in about June or July 2020. It had just come off the metal bracket. She thought it had happened through being used daily and had not been caused by inappropriate use or deliberately damaged. It had been opened and closed 1500 times over the course of the tenancy.

25. The Respondent queried whether the whole property required redecorating but suggested there had been places where water had been coming in from outside. She accepted she had not cleaned under the bed. She said the flat was only 37 square metres in size and therefore should not have needed 32 hours of cleaning nor did it merit so many trips to the skip. The Respondent said that she loved the green sofa and it had not been in bad condition. It had

not been in perfect condition at the commencement of the tenancy and the sofa shown by the Applicant in the photograph submitted although similar was not the same.

26. In response to a query from the Tribunal regarding the cleaner employed shortly before the end of the tenancy the Respondent said she had found her through Gumtree and referred the Tribunal to an email chain in Appendix 3 and dated 24 July 2020. She went on to say that she had been unable to find another cleaner to take on a final clean of the property due to their being no hot water. The Respondent said that she did not think her dog's claws could have caused any damage to the laminate flooring as she kept the claws trimmed.

27. The Respondent said that she had not removed the bed at the property as there had been a bed there when she arrived so she had decided to leave the one she had provided. She had felt that was an option.

28. Mr Dixon submitted that in an email of 10 March 2020 the Respondent had suggested that her furniture had caused marks on the flooring and had spoken of discussing replacement options and also with the tiles.

29. Mr Dixon went on to speak about there being litter everywhere and used cotton buds found across the floor along with empty chicken McNuggets boxes and dog hair. Mr Dixon referred to the email exchange with a cleaner and said that was only two people talking. The Respondent had not submitted an invoice. He queried what hourly rate the cleaner had charged and the Respondent advised it had been £12.00 per hour. Mr Dixon said he would be happy to reduce his claim to £12.00 per hour. The Respondent admitted she had not cleaned under or behind the bed.

30. The Tribunal heard evidence from Ms Beccy Jardine who resides in a neighbouring property. She had provided a witness statement that had been submitted by the Applicant. In response to questions from Mr Dixon, Ms Jardine said that on one occasion she had been inside the property after the Respondent had moved out in the middle of August 2020. She had only seen the living room. She saw that the walls were yellowed and there was black dirt on the skirting boards and the property did not smell fresh. A door had been removed and put in a cupboard. She said the property was not clean and she would not have stayed the night in it.

31. In response to a question from the Respondent Ms Jardine said the smell was a musty stale smell. She said she had seen dirty marks on the living room wall but did not recollect the floor. She said that Mr Dixon had been cleaning the property. She said she had thought it was unusual that the door had been removed but had not noticed if it had been damaged. She said she had only been in the property five or ten minutes. She said she did not think the black encrusted stuff she had seen was black mould and she had not seen any black mould.

32. In response to further questions from Mr Dixon Ms Jardine said she had not noticed a cleaner at the property but she did not keep looking out her window.

33. In response to a query from the Tribunal Ms Jardine advised that she was a marketing manager. She said she had spent 5 minutes at the property and that Mr Dixon had not pointed out any specific defects to her. She said she had moved to her home about two years previously and had never previously been in the Applicant's property.

34. Mr Dixon submitted that the Applicant's claim should be granted. The Respondent submitted that she had not caused any deliberate damage to the property.

Findings in Fact

35. The Applicant submitted her application in response to the Respondent's claims against her for failing to lodge her deposit in an approved tenancy deposit scheme and for retaining her deposit.

36. The Respondent occupied the property from 26 January 2017 until 10 August 2020.

37. The Terms of the tenancy agreement entered into between the parties provided that the Respondent keep the property in good, clean tenantable state and condition and not to damage or injure the property and that at the end of the tenancy the property and all contents belonging to the landlord be in the same clean condition they were at the beginning of the tenancy.

38. The Applicant in terms of the tenancy agreement undertook to keep in repair and proper working order the installation *inter alia* for water and electricity.

39. The Respondent had no running hot water at the property other than the electric shower from 1 March 2020 until she vacated the property on 10 August 2020.

40. The Respondent attempted to clean the property prior to leaving on 10 August and had previously arranged for a cleaner to carry out some cleaning of the property.

41. The property was not cleaned to a satisfactory standard at the end of the tenancy.

42. Although requiring to be cleaned the property remained habitable.

43. The Applicant arranged for the uplift of refuse and furniture by Edinburgh City council at a cost of £50.00.

44. The Applicant's husband took refuse to a recycling centre in his car.

45. During the period of the tenancy floor tiles in the kitchen cracked and were subsequently replaced by the Applicant's husband.

46. The Respondent was unaware that the underfloor heating in the kitchen was no longer operating.

47. The Applicant's husband replaced the underfloor heating when replacing the kitchen tiles.

48. The laminate flooring in the property was damaged during the tenancy.

49. The flooring had been laid by the Applicant's husband sometime before the beginning of the tenancy on a concrete floor on top of a vapour barrier.

50. The Applicant's husband purchased new laminate flooring and laid it throughout the property following the end of the tenancy.

51. The grouting in the bathroom was worn and discoloured.

52. The Applicant's husband removed the existing tiles and retiled the bathroom.

53. The shower screen in the bathroom broke in about June or July 2020 and was replaced by the Applicant's husband following the end of the tenancy.

54. The Applicant's husband redecorated the whole property following the end of the tenancy using paint the Applicant already had.

55. The Applicant's husband carried out the work over a period of about three months.

56. The Applicant and her husband have not re-let the property and have moved in to the property themselves following the sale of their former property.

Reasons for Decision

57. The Applicant submitted a very substantial claim for damages to the Tribunal and her husband confirmed that this was essentially because of the original claims made by the Respondent for the return of her deposit and for the Applicant's failure to lodge the deposit in an approved scheme. Had the Respondent not made these claims it appeared that the Applicant would not have pursued the Respondent for the alleged damage to the property.

58. It did appear to the Tribunal that the property could have been cleaner on its return at the end of the tenancy although the Tribunal did not doubt the Respondent's position that a professional cleaner had been employed a few weeks before the end of the tenancy and the Tribunal also accepted that the Respondent would have been somewhat hampered in her cleaning by the lack of running hot water. Nevertheless, it was apparent that the Applicant had been

put to some work and inconvenience and that it was therefore reasonable for a charge to be made for cleaning. However, the Tribunal did not accept that it would have taken the Applicant and her husband some 32 hours to clean the property nor did the Tribunal consider a charge of £15.00 per hour to be reasonable. The Tribunal considered that a reasonable charge for cleaning given the size of the property and the efforts made by the Respondent and the difficulties she had encountered was £200.00.

59. The Tribunal was not at all satisfied that the property would not have been habitable once it had been cleaned. Although the Applicant may have wished to carry out redecoration and repairs to the floors and bathroom these could all have been done whilst the property was being occupied and certainly as a place for the Applicant to stay during her working week. The Applicant did not apply to be registered as a landlord and therefore could not rent out the property. There was therefore no loss of income. Therefore, the Tribunal did not consider the Applicant's claim for loss of income or loss of personal use to be well founded.

60. The Tribunal was satisfied that the Applicant incurred charges of £50.00 for the removal of furniture and refuse by Edinburgh City Council although whether or not it was absolutely necessary to remove the sofa is somewhat debateable. However, in all the circumstances the Tribunal is prepared to allow the Applicant's claim for the removal costs in the sum of £50.00.

61. The Tribunal could not accept that given the size of the flat and the contents that it was reasonable to expect the Respondent to bear the cost of numerous trips to the recycling centre at £20.00 per time particularly given that the centre itself does not make any charge. It may well have been that the Applicant and her husband decided that on selling their property they wished to return to the property and wanted to clear it out completely but that is not a cost that should be borne by the Respondent. In the circumstances the Tribunal considered that a charge of £20.00 was reasonable.

62. The Tribunal accepted that the laminate flooring and the kitchen tiles were damaged during the period of occupancy by the Respondent. However, this is not a case of *res ipsa loquitur.* Just because the damage occurred during this period does not mean the fault lies with the Respondent. For the Applicant's claim to succeed she has to show in the balance of probabilities that the damage was caused by the wilful or deliberate or negligent actions of the Respondent and not through normal wear and tear or through some other cause outwith the control of the Respondent. The Tribunal would have expected to have been provided with expert reports to show the cause of the damage and it was not. Although the Respondent accepted her furniture may have marked the laminate flooring and although she spoke of discussing options as regards the broken tiles in the kitchen the Tribunal did not accept this as an admission of fault on her part. Taking everything into account the Tribunal was not satisfied that the Applicant had made out a case for the Respondent to be liable for the cost of replacing any of the flooring.

63. It was not apparent to the Tribunal exactly how old the shower screen was and it was clear that it had been in daily use throughout the tenancy and possibly for a longer period. There was nothing to suggest that the Respondent had deliberately broken the screen and the Tribunal concluded it had broken due to fair wear and tear and should therefore be replaced at the Applicant's cost.

64. Although the Applicant's husband decided that the appropriate way to deal with the problem with the grout in the bathroom was to replace the tiles, once again the Tribunal would expect to see an expert report confirming this was the most appropriate procedure. The Tribunal would also need to know that the problem with the grouting was caused by misuse by the Respondent, either deliberately or negligently. In this regard the Tribunal was not provided with any substantive evidence. The Tribunal therefore did not uphold this element of the Applicant's claim.

65. It was apparent that the sofa although of good quality was of a fairly substantial age. It is a fact that furniture in rented properties is subject to substantial wear and landlords have to expect to regularly replace items. Provision for this is allowed in the way in which such expenditure is dealt with by HMRC. It did not appear to the Tribunal that the Applicant actually replaced the sofa nor did she make any attempt to sell it. The Tribunal was not satisfied that it was appropriate to make a claim in the manner she had and it disallowed this element. As the Applicant's husband indicated the armchair was near the end of its useful life and was no longer insisting on this part of the claim the Tribunal disallowed this element.

66. It is not at all uncommon for landlords to have to carry out some redecoration of their property at the end of a tenancy particularly if it has endured for a few years. Some of that will inevitably be due to fair wear and tear. Some may be due to misuse by tenants and some may be due to problems with the property itself. The Respondent complained of there being black mould within the property and submitted photographs that appeared to support some evidence of that. Black mould can occur due to a tenant's lifestyle and lack of ventilation but there can be other causes. The issue for the Tribunal to determine was to what extent the redecoration was due to the Respondent and potentially to what extent it was because ultimately the Applicant and her husband simply wanted to carry out a complete redecoration before moving in to the property themselves. The Tribunal did not find the quotation from Cargill Property Maintenance to be particularly helpful given that the Applicant's husband carried out the redecoration work himself in his spare time. The Tribunal noted that in the Applicant's original statement of claim it had apparently taken the Applicant's husband 12 days to redecorate the whole property at an hourly rate of £15.00 per hour and a total cost of £1440.00. In the revised Statement of Claim based on Cargills charges there was 10 days work and after allowing for betterment the labour cost was £1462.00. The Tribunal treated this calculation with some scepticism. Given the size of the flat it seemed somewhat unlikely that it would take a professional firm of painters 10 days to carry out the work if the Applicant's husband could do the same job in 12 days. Unfortunately the Applicant did not provide a witness from Cargill Property Maintenance to speak to the quotation and therefore the Tribunal could only draw its own conclusions

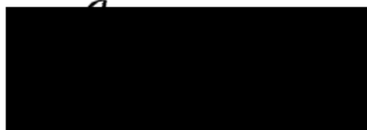
from it. Considering all the evidence before it including that of Ms Jardine the Tribunal was satisfied that the Applicant was entitled to some payment for redecoration and after carefully considering all the written and oral submissions was of the view that a sum of £500.00 represented a reasonable sum under this head of claim.

Decision

67. The Tribunal having carefully considered all of the evidence finds the Applicant entitled to an order for payment by the Respondent in the sum of £770.00.

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.



Graham Harding	**5 June 2021**
Legal Member/Chair	**Date**