



**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/21/1107

**Re: Property at 7 Strathbeg Court, Airdrie, North Lanarkshire, ML6 0AE (“the
Property”)**

Parties:

Bomo Ltd, 8 Mitchell Street, Leven, Fife, KY8 4HJ (“the Applicant”)

**Ms Lauren Hill, 76 Cumbernauld Road, Muirhead, Glasgow, G69 9AB (“the
Respondent”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision (in absence of the Respondent)

**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 £3685.00.**

Background

1. By application dated 5 May 2021 the Applicant’s representatives Select Premier Letting Limited, applied to the Tribunal for an order for payment by the Respondent in respect of alleged rent due and the cost of repairs to the property arising from the Respondent’s tenancy of the property. The Applicant’s representatives submitted copy invoices, lease agreement, bank statements, text messages and Sheriff Officers’ correspondence in support of the application.
2. By Notice of Acceptance dated 2 July 2021 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was sent to the Applicant's representative by post and was served on the Respondent by Sheriff Officers on 13 July 2021.
4. A CMD was held by teleconference on 12 August 2021. The Applicant was represented by Mr Dobbin of Select Premier Letting Limited. The Respondent did not attend and was not represented. The Tribunal continued the CMD in order that the Applicant's representative could provide further information with regards to the deposit said to have been paid at the commencement of the tenancy by the Respondent together with documentation in respect of a replacement carpet provided to the Respondent in 2018.
5. The Tribunal issued a written Direction to the Applicant requiring them to provide the Tribunal with:-
 1. All documents including any copy letters, receipts, bank statements etc. showing or tending to show any payments made in cash, by cheque or by bank transfer by the Respondent to the Applicant or the Applicant's representatives relating to the payment of a deposit of £525.00 due at the commencement of the tenancy in November 2013.
 2. Confirmation of the date when any new tenancy of the property commenced following the Respondent removing from the property together with any documentary evidence to support such date.
 3. Copies of any invoices relating to the renewal of carpets and vinyl at the property
6. By email dated 20 August the Applicant's representative submitted documents in response to the Tribunal's direction.

The Continued Case Management Discussion

7. A further CMD was held on 23 September by teleconference. The Applicant was again represented by Mr Dobbin. The Respondent did not attend and was not represented.
8. The Tribunal referred Mr Dobbin to the bank statements provided in response to the Direction and dated from 11 to 29 November 2013. Mr Dobbin acknowledged that whilst the statements did not show any deposit being paid by the Respondent, they also did not show the first month's rent being paid either. He was therefore prepared to accept that the Respondent could have paid the rent and deposit in cash and was prepared to accept that the Respondent may have paid a deposit of £525.00 as claimed by her in her email.
9. The Tribunal sought confirmation from Mr Dobbin that the rent payment made by the Respondent on 31 December 2020 would have paid her rent to 31 January 2021. Mr Dobbin confirmed that this was the case. He also confirmed the Respondent vacated the property on 10 February 2021 without giving the

required two months written notice and the Applicant was therefore seeking a further two months rent to cover the period from 1 February 2021 to 31 March 2021 in the sum of £1100.00.

10. The Tribunal referred Mr Dobbin to the Tenancy agreement submitted by him in response to the Tribunal's direction. It showed that a new tenancy had commenced on 1 March 2021. The Tribunal suggested that whilst the Respondent may have been in breach of contract by not giving written notice the Applicant had an obligation to mitigate his loss and therefore could not be paid twice for the same period. Mr Dobbin acknowledged that this was the case and indicated that the amount of rent due should only be one month.
11. The Tribunal referred Mr Dobbin to the invoice provided in respect of the carpet replaced in 2018. The Tribunal queried how frequently in his experience carpets were replaced in similar tenanted properties. Mr Dobbin said he expected to replace a carpet after 10 years. On this occasion it had needed to be replaced after 27 months because of the damage caused by the Respondent's pets.
12. The Tribunal then discussed with Mr Dobbin the remaining items on the Select Property Maintenance Invoice dated 22 February 2021. The Tribunal noted Mr Dobbin's position as discussed at the previous CMD that it had been necessary to apply 3 coats of primer to the en-suite and bathroom floors to eliminate odours caused by the Respondent's pets urinating and defaecating. The Tribunal also noted that further damage had been caused by the pets to skirtings and door facings.
13. With regards to the cost of replacing the broken shower and associated work Mr Dobbin accepted that this work might fall to be met by the Applicant as part of his obligation as landlord. Mr Dobbin also accepted that the repair to the cistern flush in the toilet would also fall into this category as would replacing the window seals.
14. With regards to the cost of renewing the window blinds Mr Dobbin explained that it was not unusual to replace blinds at the commencement of a tenancy but that it was not always required. He accepted that the whole cost should not fall on the Respondent and agreed that one half of the cost of replacement would in the circumstances be fair.
15. With regards to the remaining items on the invoice Mr Dobbin submitted that these were reasonably charged and had been incurred as a result of damage caused by the Respondent and not through fair wear and tear. The tenancy agreement provided that the Respondent was required to maintain the property in good and tenable condition and in good decorative order throughout the tenancy and that she had failed to do so. The Applicant was therefore entitled to recover the full cost of redecoration.

Findings in Fact

16. The Parties entered into a Short Assured Tenancy agreement that commenced on 18 November 2013 at an initial rent of £525.00 per month and was subsequently increased to £525.00 per month.
17. The Respondent paid a deposit of £525.00 at the commencement of the tenancy.
18. The Respondent made a final rent payment of £550.00 on 31 December 2020 in respect of her rent for the period to 31 January 2021.
19. The Respondent vacated the property on 10 February 2021.
20. The Respondent was obliged to give two months written notice of her intention to terminate the tenancy but did not do so.
21. The Applicant entered into a new tenancy agreement that commenced on 1 March 2021.
22. The Applicant arranged for a new carpet to be laid in the property in October 2018.
23. The carpet required to be replaced at the end of the tenancy as result of damage caused by the Respondent's pets.
24. It was a term of the tenancy agreement that the Respondent was required to maintain the property in good and tenable condition and in good decorative order throughout the tenancy.
25. The Respondent failed to keep the property in a good and tenable condition and in good decorative order.
26. The property required to be redecorated at the end of the tenancy.
27. It required to be cleaned.
28. Repairs to walls and plasterboard were necessary.
29. Repairs to broken kitchen and fridge freezer drawers were necessary.
30. Door stops required to be replaced.
31. Blinds required to be replaced.
32. Other repairs that were required were the responsibility of the Applicant.

Reasons for Decision

33. The Applicant sought payment of two months rent in the sum of £1100.00. The Respondent had paid rent up to 31 January 2021 and left the property on 10 February 2021. In order to comply with the terms of the Tenancy agreement she ought to have served written notice not later than 18 December 2020 to bring the tenancy to an end on 18 February 2021. She did not do so and was therefore in breach of contract. Had the Applicant not commenced a new tenancy on 1 March 2021 the Respondent would have been liable for the rent claimed by the Applicant but as he had a duty to mitigate his loss and was able to rent the property from 1 March 2021 the Respondent's liability was reduced to one month's rent in the sum of £550.00.
34. Mr Dobbin was prepared to accept that the Respondent may have paid a deposit of £525.00 in cash at the commencement of the tenancy in accordance with the terms of the tenancy agreement given that she had previously claimed in email correspondence that this was the case and given that the bank statements failed to disclose any payments at all. The Tribunal was therefore satisfied in the balance of probabilities that the deposit had been paid and therefore the balance of rent outstanding after crediting the applicant with the deposit amounted to £25.00.
35. The Tribunal was not persuaded that the cost of replacing the broken shower and shower rail, hose and regrouting tiles should properly be charged to the Respondent. It appeared to the Tribunal that this was more properly the responsibility of the Applicant as landlord to meet his obligations under Section 13 of the Housing (Scotland) Act 2006. This also applied to the cost of repairing the cistern flush and the resealing of the windows. The Tribunal therefore rejected the Applicant's claims for £310.00, £35.00 and £330.00 respectively.
36. The Tribunal accepted Mr Dobbin's submissions that the carpets in similar tenanted properties would have a life expectancy of about ten years. On this occasion the carpets had required to be replaced after only 27 months apparently as a result of the damage caused by the Respondent's pets. Whilst the Tribunal accepted that this was the case it did not consider that the Respondent should be liable for the whole cost of replacement as there was an element of betterment involved and determined that the cost should be reduced by approximately 27/120ths which amounted to £350.00. This leaves a sum due of £1200.00 in respect of this part of the claim
37. The Tribunal also considered that it would not be reasonable to expect the Respondent to meet the whole cost of replacing the blinds which had been installed new at the commencement of her tenancy. The Tribunal noted that in some cases the blinds lasted for several tenancies and in others required to be replaced more frequently. In the circumstances the Tribunal considered that a reasonable figure would be for the Respondent to be liable for one half of the cost of replacement namely £135.00.

38. With regards to the remaining items on the invoice dated 22 February 2021 the Tribunal was satisfied from the written representations and documents submitted together with the oral submissions that these costs were in all the circumstances reasonably charged. Furthermore, the Tribunal in reaching its decision also took account of the fact that the Respondent had been properly served with the case papers and had been given an opportunity to make both written representation to the Tribunal and to attend the CMDs to challenge the Applicant's claims and had not done so.
39. The Tribunal calculated that the Applicant would be entitled to rent of £25.00 and reimbursement in respect of the cost of repairs, refurbishment, redecoration and cleaning in the sum of £3660.00 and noted that Mr Dobbin did not take issue with that figure.

Decision

40. Having carefully considered the written representations and documents together with the oral submissions the Tribunal finds the Applicant entitled to an order for payment by the Respondent in the sum of £3685.00.

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
Legal Member/Chair**

**23 September 2021
Date**