



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.**

**Chamber Ref: FTS/HPC/CV/21/1321**

**Re: Property at 6 Gillies Court, Ecclefechan, Lockerbie, DG11 3EB (“the Property”)**

**Parties:**

**Mr Victor Colley, Mrs Ronwynne Colley, 7 Burnholm Road, KirkPatrick, Fleming, Lockerbie, DG11 3AY (“the Applicants”)**

**Mr Allan Murray, Mrs Mari Murray, 6 Gillies Court, Ecclefechan, Lockerbie, DG11 3EB (“the Respondents”)**

**Tribunal Members:**

**Fiona Watson (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for payment of the undernoted sum to the Applicant(s):**

**Sum of FOUR HUNDRED AND FIFTY POUNDS (£450) STERLING**

- **Background**

1. An application dated 31 May 2021 was submitted to the Tribunal under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a payment order against the Respondents in relation to return of a tenancy deposit.
2. A Case Management Discussion (“CMD”) took place on 26 August 2021 by tele-conference. The Applicants were personally present and were represented by Mr Maxwell of Dumfries & Galloway CAB. The Respondents were personally present.

3. The Applicants moved for the order for payment to be granted in the sum of £450. The parties had entered into a Private Residential Tenancy Agreement which commenced on 1 December 2017 and which ended on 31 October 2020. The Applicant paid a deposit in cash of £450. When they requested this be returned to them at the termination of the tenancy the Respondents failed to do so. No reason had been given for the failure to return same.
4. The Respondents agreed that a cash deposit had been paid of £450. This was not returned to the Applicants due to the costs incurred in carrying out works required to bring the property back up to an acceptable standard at the end of the tenancy. Decorating, gardening, patio repairs and replacement carpets were all required.
5. The CMD was adjourned and a hearing assigned to determine whether or not the Respondents incurred costs due to the Applicants' failure to adhere to the terms of the tenancy agreement and if so, whether such costs can be deducted from the tenancy deposit held.

- **The Hearing**

6. A Hearing took place by tele-conference on 12 October 2021. The Applicants were personally present and represented by Mr Maxwell of Dumfries & Galloway CAB. There was no appearance by or on behalf of the Respondents. The Respondents had lodged written submissions prior to the hearing together with photographs. In summary, the Respondents submissions set out that they had incurred costs in bringing the property back up to a satisfactory standard following the Applicants' departure and which costs exceeded the deposit held. Reference was made to the house having been repainted, furniture having been painted around, the house being dirty throughout, a cracked paving slab in the garden and the garden being overgrown.
7. The Applicants' representative moved for the Order to be granted as sought in the sum of £450. It was submitted that the deposit paid of £450 should be returned to the Applicants in full. The Respondents had taken entry to the Property prior to the Applicants' departure and started renovations works, which had prevented the Applicants from being able to fully clean the property. The Applicants had given permission for the Respondents to bring supplies into the Property prior to the end of the tenancy, but not for works to commence.
8. When they moved in, the Applicants had to redecorate the Property throughout and did so with the Respondents' consent. They were only given a very small amount of paint from the Respondents and accordingly had to buy most of the materials themselves. When they were preparing to vacate, they had fully cleaned the upstairs of the property. They were unable to clean the downstairs properly due to the Respondents having started to carry out works including removing skirting boards, doors etc which was causing mess. Further, the Respondents were carrying out these works without any sheets or protection for the floors and carpets, causing them to be dirty and covered in dust.

9. In relation to the garden, it was submitted that there was no reference in the tenancy agreement as to who was responsible for maintenance of the garden. Nonetheless, the Applicants had maintained it to an appropriate standard. They were given consent to erect a summer house and polytunnel. They were not given direction that they had to re-seed the grass after removal. The paving stone was already cracked when they moved in. The garden was in satisfactory condition when they moved out. The photographs lodged of the garden only showed one small corner and it was submitted that the Respondents had let the garden go to seed after the Applicants had vacated, and the mess caused was not down to them. It was also submitted that the Respondent had regularly visited the neighbour next door during the tenancy and had commented when looking over the fence at the garden as to how well it was being kept. No warnings had ever been issued during the tenancy or concerns raised with the Applicants. The photographs of the garden did not show the true state of the garden at the point the Applicants left the Property, and had been taken some months afterwards.

10. The only part of the house where the Applicants had painted around furniture was in one room where there was a large wardrobe fixed to the wall and there was no way of painting behind it.

11. It had been stated at the CMD that the Respondents intended to fully renovate the Property prior to moving back into it themselves therefore it was submitted that any works carried out were planned, and not required as a result of the Applicants failure to look after the Property appropriately.

- Findings in Fact

12. The Tribunal made the following findings in fact:

- (i) The parties entered into a Private Residential Tenancy Agreement ("the Agreement") which commenced 1 December 2017;
- (ii) The Applicants had paid a deposit to the Respondents in the sum of £450.
- (iii) The Respondent had failed to return the deposit to the Applicants.
- (iv) The Respondents had not basis for withholding the deposit.

- Reasons for Decision

13. The Tribunal was satisfied that the Applicants were entitled to the sum as sought. The deposit had been paid in cash and had not been lodged in a tenancy deposit scheme, by the Respondents' own admission. Whilst this application seeks a payment order for return of the deposit in terms of Rule 111, and does not seek a determination on the question of whether or not the Tenancy Deposit Schemes (Scotland) Regulations 2011 had been complied with in terms of Rule 103, it should be noted that had the deposit been lodged with a scheme then the parties could have utilised the scheme's adjudication process on the question of whether or not deductions from the deposit could be claimed by the Respondents. This option was not available to the parties.

14. The Respondents claimed in their written submission that they had incurred costs due to the Applicants' failure leave the Property in a satisfactory condition and which costs exceeded the deposit held. No vouching was lodged in this regard. There was no breakdown provided as to the costs incurred, how they had been incurred and for what purpose, nor invoices or receipts lodged. The submissions were entirely vague. The photographs lodged, particularly in relation to the garden, were quite selective in what they showed. It was unclear what some of the photographs sought to show at all. There was no evidence before the Tribunal whatsoever as to the costs allegedly incurred by the Respondents. The Tribunal were not satisfied that costs had been incurred by the Respondents and which were directly attributable to the Applicants. Accordingly, the Tribunal was satisfied that the Applicants were entitled to the Order for Payment as sought.

- Decision

15. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of FOUR HUNDRED AND FIFTY POUNDS (£450) STERLING

### **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

**Legal Member/Chair**

**Date: 12 October 2021**