



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71 Private Housing
(Tenancies) (Scotland) Act 2016 (“the 2016 Act”)**

Chamber Ref: FTS/HPC/PR/20/2605

**Re: Property at First Floor Flat Left, 113 Grampian Road, Torry, Aberdeen, AB11
8EH (“the Property”)**

Parties:

**Miss Lori-Anne Mailer, Mr Samuel Allan, 53 Ellon Road, Bridge of Don,
Aberdeen, AB23 8ET (“the Applicants”)**

**Dr Holly June Niner, Bokenna Farmhouse, Dobwalls, Liskeard, Cornwall, PL14
6LF (“the Respondent”)**

Tribunal Members:

**Josephine Bonnar (Legal Member)
Ann Moore (Ordinary Member)**

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment of the sum of £215 should be
made in favour of the Applicants.**

Background

1. By application received on 16 December 2020, the Applicants seek a payment order in relation to their tenancy deposit of £825 which was not returned to them at the end of their tenancy. The Applicants lodged a copy tenancy agreement, photographs, and correspondence in support of the application.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 16 March 2021 at 2pm. Prior to the CMD the Respondent lodged written submissions, documents, and photographs. The application called for a CMD on 16 March 2021 at 2pm. Both Applicants participated and were represented by Mr Garry Allan. The

Respondent was represented by Ms Deans but was not personally present. Following the CMD the Legal Member determined that the matter should proceed to a hearing and issued a direction for the production of additional information and documents.

3. The Parties were notified that a hearing would take place by telephone conference call on 28 April 2021 at 10am. Prior to the hearing both parties lodged documents in response to the direction.
4. The hearing took place on 28 April 2021. Both Applicants participated. They were represented by Mr Garry Allan The Respondent was represented by Ms Deans and Ms Watt but was not personally present.

The Respondent's submissions

5. The Respondent provided a bundle of photographs of the property which were taken after the tenancy ended. In addition, an invoice from Onclean dated 9 November 2020 was lodged for £316. This states that the property was cleaned throughout and that 16 hours at £19 per hour plus £12 for materials had been charged. A written statement from the cleaner was also provided. The Respondent also provided a list of all items being claimed against the deposit, some of which were missing and others which were damaged. In addition, receipts, estimates and further photographs were provided.

The Applicants' submissions

6. The Applicants provided a copy of their tenancy agreement, photographs taken at the end of the tenancy and correspondence with the letting agent. They also provided a receipt of the hire of a rug doctor which was used in connection with the carpets and curtains.

The Hearing

Preliminary Matters

7. The Tribunal noted that the Applicant's had paid a deposit of £825. At the CMD they conceded that the futon mattress had been badly stained and that £40 should be deducted from the deposit for this. They also conceded that the Respondent should retain £35 for damage to the wardrobe. This reduced the sum being claimed to £750.

Cleaning

8. The Respondent has retained £316 to cover the Onclean invoice. Ms Deans advised that at checkout the property had initially seemed to be clean and tidy. However, when she went round with the inventory, she noted that the position was otherwise. She noted dust and dog hair on carpets, curtains and behind

and under furniture. There were items lying around and in cupboards. The kitchen units and appliances were greasy and dirty. It was decided that the property required more than a surface clean and Onclean were instructed to do a deep clean. She referred to the statement from the cleaner and photographs of the property. The cleaner removed dog hair from the curtains but did not clean these or the carpets. In response to questions, Ms Deans denied that the invoice was excessive in terms of the number of hours or the hourly rate. She said that the hourly rate is standard among the cleaners that the agency uses and the number of hours reasonable given the size of the property and the cleaning required. When asked by Mr Allan why the Applicants had not been given the opportunity to come back and address any issues, Ms Deans said that this would not be usual unless the issue was a very minor one. Landlords are under no obligation to do this. The keys had been returned by the Applicants, but the property was not clean. Ms Deans also denied that it would be usual for a landlord to clean the property (at their own cost) before re-letting as it was the responsibility of the tenant to return the property in the same condition as it was let to them.

9. The Applicants advised the Tribunal that they had spent a week cleaning the property before they moved out. Mr Samuel Allan said the photographs had been taken in such a way as to make the property look bad. He said that the property was in a better condition at the end of the tenancy than at the beginning and that the Applicants believed that their deposit was being used to fund an upgrade of the property. Furthermore, they had paid £40000 in rent over the period of the tenancy. In response to questions Ms Mailer said that they had left some clothing items behind but that some of the items handed to them did not belong to them. She also advised that she had been present whenever property inspections were carried out and had been told that there were no issues. Once she was told that their flat was the cleanest property inspected that day. No concerns were brought to their attention after these inspections.

10. Mr Gary Allan advised the Tribunal that even if some cleaning had been required, the number of hours claimed, and the hourly rate were excessive.

Kitchen worktop

11. The Tribunal noted that photographs had been lodged by the Respondent of a badly scratched kitchen worktop. Ms Deans advised that this has now been replaced by the Respondent at a cost of £220 (receipts provided) but that her claim was restricted to £50. She referred to the Applicant's inventory, which they had failed to return at the start of the tenancy with any comments, and the previous tenant's inventory. These indicate that the worktop was slightly scratched in 2014 and 2015. She advised that the damage to the worktop was much more than wear and tear by the end of the Applicants' tenancy.

12. Mr Samuel Allan confirmed that the photographs lodged were accurate but stated that the worktop had been damaged at the start of the tenancy and the current condition is due to wear and tear over the last 5 years. He said that

there was no justification for a deduction of £50 and that this was being used toward upgrade costs, namely a new worktop.

Threshold bar

13. Ms Deans advised the Tribunal that there had been a photograph of this lodged, although she could not locate it. New flooring had been fitted about a year ago and the bar had been fitted at that time. It was damaged at the end of the tenancy and there had been insufficient time for this to be due to wear and tear. She is not sure if the bar has been replaced but the Respondent claims £20 for the damage - £17.49 for the bar itself (estimate provided) and the remainder for fitting.
14. Mr Samuel Allen said that any damage to the threshold bar was wear and tear. He said that the new flooring had been laid as part of an insurance claim. He had no recollection of any damage and said there was no evidence that it had been replaced.

Damaged hob

15. Ms Deans referred the Tribunal to a photograph of the hob which shows a large crack and a piece chipped off the edge. She said it looked as though something had been dropped on it. The Respondent has replaced the hob at a cost of £179 (receipt provided) but the claim is restricted to £50.
16. Mr Samuel Allan confirmed that the photograph lodged is accurate. However, he advised that the damage was minimal and was just wear and tear. Ms Mailer said that the oven had exploded the previous year and the damage had occurred then. She went on to clarify that the hob had been fragile since then. A replacement oven was installed by the letting agents, but they had not replaced the hob. The Applicants had not reported the damage to the hob because it was minor.

Lounge and bedroom carpets

17. Ms Deans referred the Tribunal to photographs which had been lodged. One shows an iron shaped mark on a carpet and another a large stain. These relate to the lounge. The Tribunal was also referred to photographs of the bedroom carpet again showing large marks. The Tribunal noted that the inventories make no reference to these, although there is some reference to wear caused by footfall. Ms Deans advised that the Respondent had not attempted to clean the carpets, the damage was too bad, and had instead replaced them. This had cost £875 (receipts provided). The claim was restricted to £40 for the lounge carpet and £30 for the bedroom carpet.
18. Mr Samuel Allan advised that they had tried to remove stains from the carpets with a hired rug doctor. The carpets were old and had come to the end of their useful lives. Ms Mailer said that there had been multiple stains which had always been there. When asked about the marks in the photographs both Applicants said they had been unaware of these specific marks. They did not

iron in the living room so could not explain this mark. When asked why they had failed to return the tenancy inventory when they moved in, they said that “with hindsight”, they wished they had done so.

Oak sideboard and bookcase

- 19.** The Respondent claims £40 and £20 for these items. Ms Deans confirmed that although estimates have been lodged as an illustration of replacement costs, the Respondent herself sanded down the damaged surfaces and varnished them. The Tribunal was referred to photographs of the sideboard which show a ring mark and a red stain. No photograph of the alleged paint marks on the top of the bookcase was provided. The inventories indicate that the sideboard is unmarked and the bookcase in good condition.
- 20.** The Applicants confirmed that the sideboard did have the ring mark and red stain at the end of the tenancy but that these were minor issues and could not justify a claim for £40. They also advised that they were unaware of any marks on the bookcase, which had photographs and other items on top of it when they lived there. Furthermore, that they had not painted the property. There had been painting carried out as part of the insurance work instructed by the letting agent in November 2019.

Pink velour footstool

- 21.** Ms Deans referred the Tribunal to photographs of the footstool, although she conceded that these do not show the damage. She advised that the footstool had been in good condition at the start of the tenancy (as per the inventories). At the checkout inspection she had noted that the legs were wobbly and that the surface was greasy and smelly, perhaps due to the Applicant's dog. The Respondent disposed of this item, as it could not be repaired or cleaned, and has not replaced it. An estimate for replacement is provided as an illustration and the Respondent seeks compensation of £30.
- 22.** Ms Mailer advised that the footstool was neither greasy nor smelly at the end of the tenancy. The legs sometimes had to be screwed back in when they became loose but were not damaged. Their dog was too large to sit on the footstool. It was in good condition when they moved out.

Bedside units

- 23.** Ms Deans said that there was a ring on the right hand side unit and both were damaged at the bottom, as though they had been chewed. She referred to a photograph of the ring mark but did not have photographs of the other damage. The Respondent claims £30 for her own work in rubbing these down and varnishing them.
- 24.** The Applicants advised the Tribunal that the mark on the top of the right hand unit was accepted, but this was minor and did not justify the claim. There were no chew marks on the bottom of these items.

Damage to Wardrobe

- 25.** Ms Deans referred the Tribunal to a photograph of the wardrobe which shows a large section missing from the drawer at the bottom. She advised that the wardrobe was purchased during the previous tenancy, from Ikea. Due to the extensive damage, the wardrobe had to be replaced at a cost of £130 (evidence provided). The Respondent claims £80 from the deposit toward this.
- 26.** Ms Mailer advised the Tribunal that the damage had been caused by their dog when it was a puppy. The Applicants also confirmed that the wardrobe was from Ikea. However, they stated that they disputed the amount being claimed for this damage and asked whether the Respondent had investigated getting a replacement drawer. They conceded that they had not made an enquiry about this possibility.

Bedroom wall

- 27.** Ms Deans referred the Tribunal to photographs of the wall at the entrance to the bedroom. She advised that the Respondent had painted this wall to cover marks and was seeking £20 from the deposit for paint and her own time. She confirmed that the room had not been painted during the tenancy but could not say exactly when it had been painted.
- 28.** The Applicants disputed this claim saying that the marks were minor heat staining or wear and tear.

Bedroom and lounge curtains

- 29.** Ms Deans referred the Tribunal to some photographs of the curtains, and said these were stained, dusty and covered in dog hair. She also advised that the Applicants had agreed to get the curtains and carpets professionally cleaned at the end of the tenancy in exchange for permission to have a dog at the property. They had not done so. The Respondent was claiming £20 for washing, drying, and ironing the bedroom curtains. The stains in the lounge curtains could not be removed. The Respondent had replaced them with blinds and was seeking £20 as compensation for the stains and smell and the failure to professionally clean.
- 30.** The Applicants advised the Tribunal that they had used the hired rug doctor machine to clean the curtains as well as the carpets and disputed that these were stained or covered in dog hair at the end of the tenancy. Ms Mailer also advised that they had not wanted to arrange for someone to come to the property to clean these items due to COVID 19.

Missing items

- 31.** Ms Deans confirmed that the Respondent is claiming for the items listed in the submission as these were not in the property at checkout. These are – black metal fireguard £20, 7 cushions £10, Finial from bedroom curtain pole £10, plastic gold framed mirror £10, goblin iron £10 and 2 metal racks with hooks

£10. Ms Deans advised that these items are on the inventory given to the Applicants at the start of the tenancy. They did not return the inventory with any comments and the Respondent therefore was entitled to assume that all these items were there at the start. She referred to the inventory and to photographs of the property which show the cushions and fireguard at the property. She confirmed that both the cushions and the iron have been replaced by the Respondent, but she is not sure about the other missing items.

32. Mr Samuel Allan said that he was not sure about the fireguard – he could not recall it. The Applicants also said that they had their own iron and had no recollection of the goblin iron referred to. They could not comment on the other items but denied disposing of anything at the property. Mr Garry Allan stated that even if these items were now missing, the Respondent's claim was excessive.
33. In his final submissions Mr Garry Allen said that the Applicant's deposit had been used to fund an upgrade of the property and that a landlord cannot expect an outgoing tenant to do that. He said that the Respondent had failed to provide evidence to support a retention of the whole deposit and that the charge for cleaning was excessive. Furthermore, the Applicant's ought to have been given the opportunity to return to the property to deal with any cleaning issues. He concluded by saying that they had paid over £40000 in rent during their 5 year tenancy and had been good tenants.
34. Ms Watt made a final submission on behalf of the Respondent. She said that deposit schemes base adjudications on the tenancy inventory, that the amount of rent paid is irrelevant to the issue of damage and that it was clear that no professional cleaning had been carried out by the Applicants, although they said that they would do this because of the dog. She added that £17 to £20 per hour is standard for cleaning contractors. The landlord is entitled to compensation for any cleaning which was required, any damage and any items missing from the property at the end of the tenancy. She denied that the Respondent was attempting to use the deposit for upgrade costs.

Findings in Fact

35. The Applicants are the former tenants of the property.
36. The Respondent is the owner and the Applicant's former landlord of the property.
37. The Applicants paid a deposit of £825 in connection with the tenancy.
38. The deposit was returned to the Respondent by the tenancy deposit scheme at the end of the tenancy.
39. The Applicants dispute the respondent's entitlement to retain the deposit.

40. The Applicants failed to clean the property and the curtains at the property to an acceptable standard at the end of the tenancy.
41. The Applicants damaged the kitchen worktop, the hob, the lounge and bedroom carpets, the oak sideboard, and the wardrobe during the tenancy.
42. A black metal fireguard, 7 cushions, a finial from the bedroom curtain pole, a plastic gold framed mirror, a goblin iron and 2 metal racks were missing from the property at the end of the tenancy.

Reasons for Decision

43. At the end of a tenancy, any deposit paid by a tenant should be returned to them unless there are any sums due to the landlord for unpaid rent, loss or damage to items of property owned by the landlord or failure to leave the property in a clean and tidy condition. In this case, the Respondent claims that the whole deposit is required to cover cleaning and losses and damage caused by the Applicants. The Applicants concede that the Respondent is entitled to retain the sum of £75 and are therefore seeking a payment order for £750.
44. The Tribunal is satisfied from the evidence of Ms Deans, and the photographs lodged, that the property had not been thoroughly cleaned by the Applicants at the end of the tenancy and that cleaning was required before the property could be re-let. The Tribunal is also satisfied that a cleaning company was instructed to do the work and issued an invoice for £316, most of which related to time spent (16 hours at £19 per hour). The Applicants took issue with the hourly rate, but the Tribunal is satisfied that this is standard. However, the Tribunal noted that the cleaning contractor did not clean either carpets or curtains and that the property comprises a living room, dining room, bedroom, kitchen, and bathroom. The Tribunal also notes that Ms Deans had initially thought that the property was in reasonable condition and that a surface clean was all that was required. The Tribunal is therefore not persuaded that a charge of 16 hours was justified. This may be what was charged by the contractor, but that does not mean that it was actually required. In the circumstances, the Tribunal is satisfied that the Respondent is entitled to deduct the sum of £145 for the cost of cleaning at the property based on 7 hours of work and £12 for materials.
45. The Tribunal is satisfied from the evidence provided that the kitchen worktop was badly scratched at the end of the tenancy. The inventories support the Respondent's evidence that the worktop was only slightly scratched when the Applicants moved in. The damage does not appear to be just wear and tear. Kitchen worktops are designed to be hard wearing but care has to be taken with knives and other implements. The Respondent has provided evidence that a replacement worktop has been installed at a substantial cost. She only seeks to pass on part of that cost to the Applicants, the sum of £50, for the damage they caused. The Tribunal concludes that the Respondent is entitled to retain the sum of £50 for the damage to the worktop.

- 46.** The photograph lodged of the threshold bar does not show any damage and there was no evidence that this has actually been replaced by the Landlord. The Tribunal is not satisfied that the Respondent is entitled to retain £20 for this item.
- 47.** The photographs submitted clearly show damage to the hob and this was not disputed by the Applicants. Ms Deans suggested that it looked as though something had been dropped on it and this appears to be a plausible explanation. The Applicants gave conflicting evidence on this issue. Mr Allen said that it was just wear and tear. Ms Mailer firstly said that the damage occurred when the oven exploded and then clarified that the hob had become fragile following this incident, the suggestion being that the oven incident had weakened the hob which subsequently became damaged. The Tribunal is not persuaded by these somewhat contradictory statements nor by the claim that they had not reported the hob damage because it was minor. The Tribunal is satisfied that the Respondent is entitled to retain part of the deposit to cover the damage caused and considers £50 toward a replacement a reasonable deduction.
- 48.** The Tribunal is satisfied from the evidence that there were large marks on the carpets which could not be attributed to wear and tear. The Applicants' recollections, particularly in relation to the iron shaped mark on the lounge carpet and a large mark on the bedroom carpet, were simply not credible. They also conflicted with their evidence that the carpets had multiple stains which they had attempted to remove with the rug doctor. The Tribunal is also satisfied that the Applicants had undertaken to have carpets and curtains professionally cleaned and that doing this themselves with a hired machine did not comply with that undertaking. That said, the marks shown in the pictures appear to be damage rather than dirt. The Tribunal is satisfied that the Applicants damaged the carpets during the tenancy and, although these may have been old and worn, the Respondent is entitled to compensation for that damage. It was suggested that she replaced the carpets as part of an upgrade. However, she may not have replaced them if the carpets had not been damaged. The Tribunal is satisfied that the Respondent is entitled to a deduction from the deposit for the damage to the carpets and that the sum of £ 70 is a reasonable one, given that she replaced the carpets at a cost of £825.
- 49.** The Tribunal is satisfied that the surface of the oak sideboard was marked. This is clearly shown in the photographs and not disputed. The Respondent claims £40 for her own time spent rubbing down and varnishing. This seems excessive in the circumstances. The Tribunal is satisfied that the Respondent is entitled to a deduction from the deposit of £20 for this damage. No photograph of the alleged damage to the bookcase was produced. The Tribunal is therefore not satisfied that it was marked. In any event, if there were paint marks, these may have been caused by the painter who carried out part of the insurance work, rather than the Applicants. The Tribunal concludes that no deduction for this item is due.
- 50.** Although photographs of the surface of the footstool were lodged, these do not establish the complaints that it was dirty or smelly. Furthermore, there appears

to have been no attempt to clean it or repair the legs (if these were actually damaged, as opposed to just loose). Even if the complaints had been established the Tribunal considers it likely that the condition of this item was due to wear and tear and that the Respondent should not be entitled to a deduction from the deposit in relation to same.

- 51.** The photographs of the bedside units show a ring mark but no damage to the bottom of the units. The former is accepted by the Applicants, but they dispute the latter. The claim is for £30 for the time spent rubbing down and varnishing. The Tribunal is satisfied that the Respondent should be compensated for her time in removing the ring mark and that a deduction of £10 from the deposit is appropriate.
- 52.** The damage to the wardrobe is evident from the photographs and not disputed. The only challenge is to the amount of the deduction from the deposit by the Respondent. The Tribunal is not persuaded by the Applicant's argument that the Respondent ought to have tried to obtain a replacement drawer. It is the Applicants who ought to have done this to avoid losing part of their deposit. The damage is substantial, and the Tribunal might have been minded to award the Respondent the whole replacement cost, had it been requested. In the circumstances, a deduction of £80 for part of the replacement cost of the wardrobe seems entirely reasonable.
- 53.** The photographs of the bedroom wall show that the wall was marked but these marks are not significant. The Tribunal is satisfied that, after a five year tenancy, walls in a property are likely to be grubby and slightly marked and this type of issue is certainly wear and tear. The Respondent is not entitled to a deduction for painting the wall.
- 54.** The photographs of the curtains only show slight marks on the curtains but, as with the carpets, the Applicants undertook to have these professionally cleaned and did not do so. This would not necessarily have involved someone coming to the house as they could have been taken to a dry cleaner. This would certainly have cost much more than the hire of the rug doctor machine which is presumably why they did not comply with their agreement. The deduction applied by the Respondent for cleaning the curtains, of £20 per set, does not seem excessive.
- 55.** The Tribunal was not persuaded by the evidence of the Applicants in relation to the missing items. While it might be understandable for one or two of the smaller items to have remained unnoticed, particularly since the Applicants did not check the inventory, their claim that they had no recollection of/and could not comment on the fire guard or cushions was not credible. These would have been very visible items. Either they were there, or they were not. Both inventories suggest that these items were in the property when they moved in. They were not there at the end of the tenancy. The Respondent does not claim full replacement value for the items, but a nominal amount is sought for each item that was missing. The Tribunal is satisfied that the Respondent was entitled to deduct the sum of £70 for these items.

56. The principal argument put forward by the Applicants is that their deposit was used to fund an upgrade of the property. There was no evidence of this. For the most part, the sums claimed were much smaller than the sums spent by the Respondent. Aside from the deductions which the Tribunal concluded were wear and tear, the Respondent has established that she was entitled to deduct the sum of £535 from the deposit of £750 for cleaning and damage. The Applicants are therefore entitled to a payment order for £215.

Decision

57. The Tribunal determines that an order for payment of the sum of £215 should be made in favour of the Applicants.

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.



Josephine Bonnar, Legal Member

30 April 2021