



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies)(Scotland) Act 2016.

Chamber Ref: FTS/HPC/CV/20/0845

Re: Property at 28 1F1, Melville Terrace, The Meadows, Edinburgh, EH9 1LP (“the Property”)

Parties:

Dr Purvi Patel, 11 Elliot Road, Dundee, DD2 1SY (“the Applicant”)

Mr David Jacobs, Mrs Jennifer Botsford, Mrs Carolyn Pleass, Mrs Anne Taylor, 7 Robert Street, Stonehaven, AB39 2DN; 191 Chatsworth Court, Pembroke Road, London, W8 6DD; Cotterhouse, Dollar, Clackmannanshire, FK14 7NH; 3 The Courtyard, Temple, Kinneff, Montrose, DD10 0SZ (“the Respondent”)

1. Tribunal Members:

Karen Kirk (Legal Member) Elizabeth Currie (Ordinary Member)

This Hearing was a Hearing fixed in terms of Rule 24 of the Procedure Rules and concerned an Application under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (hereinafter referred to as “the 2016 Act”) for civil proceedings in regards a PRT dated August 2017. The Hearing took place by teleconference due to the covid-19 pandemic. The manner and procedure of the Hearing was explained to parties.

2. Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the Application.

3. Attendance and Representation

The Applicant was present.

The Respondents were present as follows;

Maximillian Botsford was present for Jennifer Botsford

Alison Jacobs was present for David Jacobs.

Anne Taylor was present.

Carolyn Pleass was present.

4. Preliminary Matters

The Applicant had lodged a document dated 30th September 2020 pertaining to work carried out on the property. There was no objection to the lateness of this. Further documents had also been lodged by Mr Botsford and Carolyn Pleass. There were no witnesses to be called other than those present.

5. Findings in Fact

The Tribunal found the following facts to be established:

- The Applicant is the owner and landlord of the property.
- The Applicant rented the property under a Private Residential Tenancy from 25th August 2017 until the 24th August 2018.
- The Tenancy terminated on 24th August 2018.
- The tenancy was shared by 4 students and was a multiple occupancy property.
- Each tenant had a Guarantor by virtue of a Guarantor Agreement. The Guarantors being the Respondents.
- The Guarantor Agreement stated and agreed by all Respondents confirmed at Clause 1 that they had all agreed to meet the financial and other commitments arising from the Tenancy Agreement.
- The Tenancy Agreement does not contain any clause's referring to the Guarantor Agreement.
- The Guarantor Agreement states at Clause 6 that the Agreement shall be terminated on the termination of the Tenancy Agreement between the Landlord and the Tenants or by written agreement between the parties.
- A deposit for the property of £3000 was paid at the commencement of the Tenancy and paid into an approved tenancy deposit scheme.
- At the termination of the Tenancy in August 2018 the tenancy deposit was returned in full to the tenants in or around November 2018.
- At the commencement of the tenancy on 24th August 2017 the Applicant's letting agency Braemore Lettings carried out a check in report/inventory.
- Following the termination of the Tenancy Braemore Lettings carried out a check out report dated 31st August 2018.
- The Applicant after the end of the Tenancy carried out the following works to the property;

Professionally cleaning of property including removal of furniture £270.60

Replacement of laminate flooring throughout living area £370

Repair to lead glass in the kitchen door. £205.49

Replacement of freezer drawer/shelves. £110.94

Fixing of toilet seat, drawer, curtain pole and kitchen door handle. £110.00

- The Tenants advised the Letting agency and wrote to the Applicant at the commencement of the Tenancy about 4 chairs within the property which were in need of repair or replacement.
- The chairs within the property through wear and tear become unable to be used and the Tenants by email in May 2018 told the Applicant they had had to replace the chairs.
- The Tenants purchased their own chairs to use within the property and left them behind to replace the chairs which had broken.
- The Applicant in June 2018 bought 4 new chairs from John Lewis to replace the broken chairs but did not place them in the property during the time of the Tenancy.
- In or around October 2017 the Tenants sought permission to install a Dishwasher at their expense and confirmed to the Applicant they would pay for any damage as a result thereof.
- In June 2018 due to a HMO inspection the Applicant had to have removed the dishwasher in order to move the washing machine from the bathroom of the property to the area where the dishwasher was.
- Minor light warping was found in the kitchen area in a close up picture only of the flooring by the letting agency.
- The Applicant following the end of the tenancy replaced the floor of the kitchen and living area.
- The Check in and Check out reports do not contain the same pictures or detail as each other.
- The Application was raised against the Guarantors only for the works carried out after the end of the Tenancy and not the tenants.
- The Guarantor Agreement is not referred to in the Tenancy and the agreement is a contract between the Applicant and the Respondents and states that the Agreement terminates on termination of the Tenancy Agreement.

6. Summary of Evidence

a) *Dr Purvi Patel – the Applicant*

The Applicant's evidence was that she sought a payment order for damage to property to the amount of £1265.03. This relates to a tenancy at 28 1F1, Melville Terrace, The Meadows, Edinburgh, EH9 1LP. The Respondents were the guarantors for the tenancy which commenced on 25th August 2017 and ended on 24th August 2018. She sought monies from the guarantors for the following which she submitted the Guarantors were liable for the following;

1. The flat to be professionally cleaned £270.60
2. The replacement costs of 4 chairs which had been mostly disposed of within the property. £198
3. Replacement laminate flooring due to damage by the Respondents. £370
4. Repair to lead glass in the kitchen door. £205.49

5. Replacement of freezer drawer/shelves. £110.94
6. Fixing of toilet seat, kitchen drawer, curtain pole and kitchen door handle. £110.00

The Applicants evidence was that the check in and check out inventories established the damage caused. She relied on both inventories which she said established the damages she sought. She in particular referred to the check-out report carried out by Braemor Letting 29th August 2018. She referred to page 6 and noted there was a few minor problems of wear and tear re the bathroom. She referred to Reference 51 and noted the wooden door had crack to top left pane and handle lose. In regards the laminate flooring she relied on the description of light warping in the check-out report and said this was caused by the tenant's dishwasher at Reference 58. She said the tenant had put a dishwasher here and this caused warping. The check-out report did not say the cause but she referred to the invoice reports she had lodged prepared by Marcin Kowina. She said in evidence she did not know where the dishwasher was installed. She said it was removed in June 2018 at the HMO inspection to allow the washing machine at their request to be moved from the bathroom to the kitchen. She relied on the invoice reports of Mr Kowina and a conversation she had with him to establish the damage to the laminate flooring was caused by the tenants dishwasher. She said she didn't know where the dishwasher was but that Mr Kowina told her there was damage to the flooring.

In further reference to the check-out report to establish the damage she referred to Reference 72 stating the facing of the top drawer was away. In reference 74 she sought to establish that the 4 dining chairs in the flat had been replaced by 6 wooden chairs purchased by the tenants. She said she was not happy with the chairs being replaced and she gave evidence that she visited John Lewis and purchased in June 2018 4 replacement chairs of a similar type that she had had in the property for £198. She asked John Lewis to deliver the chairs at later date and the tenants continued to use the chairs they had purchased. She sought payment for the new replacement chairs. The chairs that had been present were from Tesco and she said she bought them around March or April 2017. The letting agency she said had not reported to her anything about the chairs. She said the letting agency was not her agents. She said they found the tenants and then she was dealing with it after that and they did the check in report. She said the whole kitchen and lounge flooring had to be replaced as they could not find the same laminate and she considered the tenants liable to meet the costs of it.

The Applicant further gave evidence that the crack to the stained glass door in her evidence would not just crack as normal wear and tear she said the glass had been in that door for 15 years without difficulty. She referred to page 17, picture 51 of the check-out report and explained a fire retardant board had been behind the glass door for 15 years.

The Applicant referred to picture 308 showing cracks to freezer shelves/ drawer and she gave evidence this was more than in her view fair wear and tear referring to the repurchasing of the shelves and drawers she had vouched in the Application, she referred further to Ref 72 which showed the drawer broken at page 18.

Her evidence was further that the cleanliness was poor and there was dirty skirting boards and in general it was dirty and had not been cleaned properly. She said in evidence she could see at picture ref 5 of check out dust on skirting. She referred to Ref 152 showing a radiator with a mark she said this established the cleanliness of the flat on check out.

The Applicant said the check-out report had been carried out on the afternoon that the tenants left the property. She said the Letting agents carried it out at 3.30pm and completed a check out report then. She considered the Tenancy agreement meant she was responsible for wear and tear but not damage. Her evidence was that the tenants knew from her contractor Marcin Lowina who she said visited before the end of the tenancy what defects were needing rectified. She said as far as she was concerned the tenants were liable for the damage

The Applicant's position at the last hearing of the Application namely the CMD on 31st August 2020 was that water damage had been caused to laminate flooring by a dishwasher installed without permission. Her position in the hearing was she had only seen copy correspondence between her and lead tenant Maximillian Botsford where they discussed the installation of the dishwasher recently but in that she noted the tenants had agreed they would pay for any damage caused by the dishwasher. She said it can be seen from the check-out report that the laminate flooring had to be replaced. She said that the letting agency told her that the property was needing a clean. After the end of the tenancy then she was in south Africa and I did not get the email stating the tenancy deposit scheme were releasing the deposit.

b) Maximillian Botsford – Lead Tenant and representative of Jennifer Botsford.

Mr Botsford's evidence was that the Applicant had been difficult to communicate throughout the tenancy and after the tenancy ended. He said she had said she had not received emails and had at the CMD said she did not give permission for the dishwasher but that was not true. He referred in evidence to the correspondence between him and the Applicant regarding the dishwasher. He said he and the other tenants had at the check in notified the letting agency that the chairs in the kitchen were in disrepair. In regards the chairs he had further sent an email relating to the tenant's replacement of the chairs on 24th May 2018 and considered the Applicant was aware of the matter before the end of the tenancy. He said his position was that the chairs were cracking and one was already broken on his entry to the property. He also considered them to be of poor quality.

He maintained that he had received correspondence relating to the dishwasher installation from the Applicant seeking a signed letter agreeing to cover any damage caused by installation of the dishwasher. He had lodged that signed letter. He said it showed the Applicant had known of the installation and had allowed same. He considered that the dishwasher which he said the tenants had paid for installation of in October 2017 had to be removed in June 2018 due to the HMO inspection which meant the washing machine had to move from the bathroom to the kitchen. There was no longer any room for it and he considered it was not the dishwasher but the washing machine that would have caused any damage.

He said further when the washing machine was swapped for the dishwasher none of the tenants were present. He said he had wanted to be present to ensure he saw if there was any damage and had flown from London for it. The Applicant's handyman Marcin Kowina did not turn up on the day it was arranged for and Mr Botsford referred to text messages between the Applicant and himself regarding this. He said he completely refuted there was any leak from the dishwasher and the tenants were not advised of any damage at the time.

He referred to Ref 152 picture which showed a mark on the radiator beside door and refuted this was relevant to cleaning and said it was fair wear and tear. He said the quality of photos were difficult to see and he cannot see anything but the line in the photo and that this does not establish the cleanliness of the flat. He said further he did not consider it fair given the tenants had purchased the microwave and left it for the benefit of other students for the Respondents to be liable for cleaning of that microwave. He said she thought the Applicant was seeking new for old and he opposed the Application.

c) Carolyn Pleass – Respondent

Ms Pleass continued to oppose the Application in evidence and she had detailed lodged written representations, to which she referred. She said in evidence that the boys had noted the repairs that needed done on check in to the letting agency and had also sent a post copy to the applicant. This included the chairs she said and the curtain pole. She said the Applicant claimed the note of the disrepairs on check in was not received but she knew the tenants had also sent it to the Applicant. Her evidence was that any time the tenants asked for a repair during the tenancy the response was that they should do it themselves. She said the tenants had reported a self-closure needed repaired and she said it had almost decapitated their heads. The initial response from the Applicant for that she said was that they should do it themselves. Her evidence was that the standard response was that the tenants repair anything themselves.

She said further that the tenants had reported the broken chairs on the day they moved in and nothing was done so they then replaced them at their own cost. She said she

did not consider that the kitchen chairs given this was the tenants' responsibility. She refuted that the check-out report says anything about the property being unclean. She also considered that the Guarantor agreement did not make her liable as guarantor the damages if the tenants were liable. She said that the terms of the lease regarding the deposit and the fact the deposit was paid in full were in her view being departed from.

She referred to the CMD in August when she recalled the Applicant said there wasn't consent on the installation of the dishwasher but that she had now seen an email lodged with the Tribunal saying they wanting to put a dishwasher in and an agreement setting out they would pay for any damage caused by it.

Her evidence was that nothing in the check in or check out reports established that the dishwasher had caused any damage. She commented on the lack of evidence establishing any damage.

Mrs Pleass the Respondent said in evidence that she had removed the dishwasher before the end of the lease and had helped her son. She said she could not understand how the Applicant's contractor would know what it was that had caused the damage. She understood she said when the washing machine was moved to the kitchen there was no sign of damage and the tenants were not aware of any. She considered over time laminate flooring in a kitchen may warp but she did not consider the tenants liable.

She further refuted the quality of the photos in the check in check out reports relied on by the Applicant. She said the photo being relied on by the Applicant does not show where the laminate was or the scale etc.

Mrs Pleass said in her view the time delay was significant because as far as the parents were concerned their boys vacated in August 2018 and the full deposit was returned in November 2018. She considered the matter to be at an end. She did not consider the application was timely given the deposit had been returned. She said she was not liable as guarantor for the alleged damage which was not accepted.

Mrs Pleass said a couple of days before the end of the tenancy her son had to leave as he had a shift at the festival. When she arrived at the property she had noted the dishwasher was in the middle of the floor so she helped move it to the downstairs. She said the flat looked cleaner at the end than at the beginning. She said further when she helped move the tenants in the shower screen was covered in mould and they went to buy a replacement curtain to put up that day.

d) Anne Taylor – Respondent

Mrs Taylor adopted the evidence of Mrs Pleass and the written submissions lodged by Mrs Pleass. She said in her view there had been Extreme communication difficulties between the landlord and tenants and they had—never got check out report until the Application had been lodged. She said the check in and check out reports are not like for like for example she said the picture of the radiator relied on to say the flat was unclean did not have a correspondence picture of the radiator when the tenants had moved in. She said that she herself had cleaned that room as that was her son's room and thought what was on the radiator or showing the mark must be wear and tear. She reiterated there was no picture of the radiator.

7. Submissions

For the Respondents

Mrs Pleass for the Respondents said that she had herself agreed to be guarantor due to the substantial deposit paid and the guarantors agreement when I agreed to was because of a significant deposit. She referred to clause 6 of the agreement and questioned her liability in any event. She said the pictures did not establish damage and the evidence of the inventory was not clear or comparable as the check in was significantly longer in length than the check out. She submitted that you cannot see from the photos how clean or otherwise the flat was.

For the Applicants

The Applicant said she had been told the flat was unclean by the letting agency and had been in Cape town so had asked that the letting agency arrange with other companies to get the work done. Braemar did this in cape town I spoke to lead glass workman once and they were organised through brae more .

8. Reasons for the Decision

The Tribunal carefully considered the evidence submitted by both parties both orally and in writing. The Applicant was clear in her evidence that she considered she had incurred loss and damage as a result of damage caused by the tenants and that this was more than fair wear and tear and as such recoverable under the Tenancy Agreement. She was clear that the Respondents had liability for the damage she said was recoverable under the Guarantor agreements. The Applicant had lodged vouching for all the work undertaken but in the Tribunals view presented a lack of evidence at the Hearing supporting that the work required to be carried out due damage which was recoverable in terms of the tenancy. The Tribunal during the evidence heard that the Applicant had previously maintained she had not given permission for the installation of the dishwasher but then the Respondents had lodged correspondence which on the balance of probabilities showed otherwise. The Applicant relied heavily on the check in and check out reports but the Tribunal

considered in the absence of evidence supporting those reports it was difficult to establish damage on the basis of a number of the photographs relied upon by the Applicant. For example the Applicant referred to a photograph of a radiator on check out but the same radiator had not been photographed on check in. She said it supported her position that the flat required a professional clean but she could herself identify what the picture showed.

The Applicant further relied on evidence she gave that her handyman/contractor Mr Kowina told her about the flat but there was no detailed evidence about that other than invoices for work carried out and no ability for the Respondents to challenge it. The respondents refuted the evidence given that their dishwasher caused damage to the flooring and in any event the Tribunal heard that the washing machine was also in the same site as the dishwasher prior to the end of the Tenancy. In the Tribunal's view the Applicant failed to establish that the replacement of the laminate floor was due to the Tenant's dishwasher.

The Tribunal noted that the professional clean included removal of furniture belonging to the Applicant and the Applicant relied on the check-out report which did not state anything about the cleanliness of the property. When challenged by the Respondents, some of whom cleaned the property with their son's before the end of the tenancy that the property was clean the Applicant said she had been told by the Letting Agency it required a professional clean and was not. On balance the Tribunal preferred the evidence of the Respondents some of whom had been present in the property at the time and the check-out report did not establish that the tenants were liable in terms of the tenancy for same.

The Tribunal had regard to the fact that the Tenants had tried to report the disrepair to the chairs and had lodged evidence of this, had lodged communication with the Applicant that they had required to replace them and had left the chairs. The Tribunal considered that the tenants could not be responsible for replacing old chairs for new even if the Applicant could show that the disrepair of them was more than wear and tear, which the Tribunal considered was not established. It was noted by the Tribunal that the replacement chairs were purchased in June 2018 but not in fact used and placed in the property prior to the end of the Tenancy and the tenants had no benefit of them.

The Tribunal considered further the remaining damages sought in regards the door window, fridge boxes and general disrepair. These issues with the exception of the general disrepair the Applicant did establish on a balance of probabilities the damage by virtue of clear photos in the check in and check out reports and to an extent was not largely challenged by the Respondents. The general disrepair regarding the toilet seat, drawer and kitchen drawer, some of which was noted as in disrepair on commencement was challenged and other than invoices there was no evidence that

the work required was either present on commencement or necessary due to fair wear and tear in a student property such as this.

Notwithstanding the evidence in regards the property and the works which were carried out following the Tenancy the Tribunal had particular regard to the position of Ms Pleass one of the Respondents. She had provided consistent written and oral evidence and submissions to the Tribunal. In doing so she raised with the Tribunal clause 6 of the Guarantor Agreement which states

“ This Guarantee Agreement shall be terminated on the termination of the Tenancy Agreement between the landlord and tenants or by written agreement between the parties”

Her position was that she had agreed to be guarantor on the basis of a substantial deposit and in the full return of same had considered all matters regarding the property were at an end and further this clause meant she was not liable for the damages in any event. The tribunal on consideration of same and in particular the clause referred to, the lack of any additional responsibilities of the Guarantor in the tenancy and the fact the Applicant did not seek recovery of the costs until after the Tenancy had terminated, in reality significantly after it had terminated the Tribunal considered the contract between the Landlord and Respondents as Guarantors was at an end. The Respondents even if the damages could be established in evidence as recoverable in terms of the Tenancy were not liable for them in terms of the Application. There were no continuing provisions or liabilities on consideration of the Tenancy Agreement or Guarantor Agreement beyond the terms of the Tenancy for the Guarantors and for this reason the Tribunal was bound to refuse the Application.

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.

Karen Kirk
Legal Member

12 October 2020

Date