



**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/CV/20/1227

Re: Property at Hattrick Farm, Craigbet Rd, Bridge of Weir, PA11 3SF (“the Property”)

Parties:

Miss Kimberly Sneddon, Mr Martin Friel, 2 Stepends Cottage, Lochwinnoch Road, Kilmacollm, PA13 4TA (“the Applicant”)

Mr Robert Baxter, Hattrick Farm, Craigbet Rd, Bridge of Weir, PA11 3SF (“the Respondent”)

Tribunal Members:

**Josephine Bonnar (Legal Member)
Elizabeth Dickson (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 £60 should be made in favour of the Applicants.

Background

1. By application received on 21 May 2020, the Applicants seek a payment order in relation to part of a tenancy deposit not returned to them at the end of their tenancy. The Applicants lodged a copy tenancy agreement, photographs of the property and a certificate from Safe Deposit Scotland in support of the application.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 5 August 2020. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 25 August 2020. At the Applicant’s request, the CMD was postponed to allow the application to call at the same time as a related application under Chamber Reference PR/20/0786. Parties were notified that the CMD would take place on 8 October 2020 at 10am by telephone conference call. Prior to the CMD both parties submitted written representations and documents. The Applicant also

submitted video evidence and photographs. They also notified the Tribunal that they had audio evidence, a recording, which they wished to submit as evidence. They were advised that the Tribunal IT systems could not facilitate the receipt of this evidence, but that it should be discussed at the CMD when the Legal Member of the Tribunal would determine whether it could be considered.

3. The application called for a CMD on 8 October 2020 at 10am. Both Applicants participated. The Respondent was represented by Mr Wood, solicitor. The Legal Member noted that the Applicants paid a deposit of £900. This was not lodged in a tenancy deposit scheme until January 2020, just before the tenancy came to an end. After the tenancy ended, the Respondent notified Safe deposit Scotland (“SDS”) that he was claiming £110 of the deposit for damage and cleaning. This was disputed by the Applicants. Rather than go through the SDS adjudication process, the Applicants elected to take the matter to the Tribunal as they already had a related application pending under the Tenancy Deposit Regulations. SDS paid out £790 to the Applicants and £110 to the Respondent. Mr Wood advised the Legal Member that the £110 was made up of £10 for cleaning and £100 for plastering and redecoration. He was not able to provide any details. The Applicants disputed the sum claimed on the basis that property had been thoroughly cleaned by them and that they had not caused any damage. They advised that they had an audio recording of a checkout meeting at the property, when the Respondent had stated that he was satisfied with the condition of the property and would return the whole deposit. They confirmed that the Respondent had not been notified that the meeting was being recorded. Following the CMD the Legal Member determined that the matter should proceed to a hearing.
4. Parties were notified that the application would call for a hearing on 8 December 2020. Prior to the hearing both parties lodged written submissions and documents. The Respondent also lodged affidavits. The application called for a hearing by telephone conference call on 8 December 2020 at 10am. The Applicants both participated in the morning. The First Applicant was unable to participate in the afternoon, due to work commitments. The Respondent participated and was represented by Mr Wood, solicitor.

Summary of the Respondents submissions

5. The submissions and affidavits refer to the documents lodged and stated that Ms Louise Wark (LW) carried out cleaning and repairs to the property after the lease ended, namely a deep clean of the cooker and filling holes in walls with paster/Polyfilla. The Respondent objected to the use of the audio recording as he has not been provided with a transcript and it was taken without his knowledge or consent. The Respondent did not recall saying that the whole deposit would be returned, during the meeting. The issues with the property had not been noticed until after the checkout meeting. LW made notes on an inventory of the property during the checkout meeting. There were no holes in the walls at the start of the Applicants’ tenancy. The sum of £110 is a reasonable reflection of the cost of materials and time spent to rectify the defects. The Respondents have produced a photograph of the cooker hood which shows an accumulation of dead flies and greasy filters which needed to

be cleaned. The Applicants were given a £300 decoration allowance at the start of the tenancy which should have been used to fill in any small holes in walls. The Respondent could reasonably assume that redecoration would have covered and infilled any "very small picture holes". At the checkout meeting LW marked up a copy of the property inventory with any issues. Immediately following the checkout, once the property was vacated, the Applicant was able to inspect more carefully and noticed that the cooker hood and filters required to be cleaned and that the tenants had made holes to put up shelves and pictures in several rooms. The cost of materials to repair the holes was minimal but the work took time. The photograph of the cooker hood which is lodged was taken shortly after checkout by LW. The Respondent opposes the award of expenses against him and seeks expenses against the Applicant in terms of Rule 40 of the Procedure Rules.

Summary of the Applicant's submissions

6. The Respondent may not have been aware of the recording of the meeting, but it was not illegal to have made it. LW admitted during the checkout meeting that the issues being raised were already present at the property before they moved in. The cooker hood was thoroughly cleaned. The property has not been decorated or repaired in between tenancy lets over several years. Many of the holes were already there when they moved in and were used by the Applicants to hang their own stuff. They only had 1 mirror and 4 pictures in the hall. LW had pictures etc in the property when she lived there as tenant before the Applicants. The holes have built up over time. The Applicants seek expenses due to the money spent by them on the property and the cost of accommodation when they were between tenancies. No pictures of the holes in the walls have been produced. The picture of the cooker hood has only been produced now, although the dispute has been ongoing for 11 months. It is undated.

The Hearing

Preliminary Matters

7. The following preliminary matters were dealt with by the Tribunal; -
 - (i) Mr Wood advised that the Tribunal would hear evidence from the Respondent and LW.
 - (ii) The Applicants advised that they wished to lead evidence from Mrs Connelly Brown. Mr Wood objected to this stating that he did not believe she was able to give evidence relevant to the application. The Applicants advised that she would give evidence on the condition of the property at the beginning of the tenancy. The Tribunal determined that the witness would be allowed to give evidence.

- (iii) The Legal Member advised the parties that the Tribunal had considered the issue of the audio recording and had decided that it would not be allowed.
- (iv) The Applicants confirmed that they intended to rely on some of the photographs and videos which had been lodged by them before the CMD. Mr Wood advised the Tribunal that these had not been sent to him. Following enquiries, it was established that these had not been sent to the Respondent as an email address had not been available at the time. Following discussion, the Applicants advised that they would proceed with the hearing without reference to the photographs and videos, rather than have the matter adjourned for this evidence to be crossed over the Respondent.

The Respondents evidence

8. Mr Baxter stated: - Mr Friel and Miss Sneddon (MF and KS) were given the keys to the property 2 weeks before the start of the tenancy and £300 for redecoration. At the checkout meeting everyone met in the kitchen and then split up to go round the rooms. MF and Mr Crawford (AC) were mainly with him. The two inventories which have been lodged – one was from the check in and the other was marked up by LW when they went round at checkout. The check in inventory was signed. At checkout he saw LW ticking and making notes on the inventory. He stands by the affidavit lodged. With reference to the photograph of the front porch, there is a mirror hanging and a shelf. With reference to the photograph of the main bedroom there are mirrors hanging. They did not have permission to hang items on the walls. He does not remember saying at the checkout meeting that the whole deposit would be returned. With reference to the photograph of the cooker hood – this was taken by LW **a few days later**. There were grease and flies on it. When he noticed it he instructed LW to clean it. It took an hour or an hour and a half. The marked-up inventory which has been lodged is a proper reflection of the holes in the walls at the property.
9. In response to questions from Mr Friel:- The £300 for redecoration was deducted from the deposit. The deposit was £900. They had paid a deposit for their previous property of £480 which was transferred. They were given a credit of £120 for a fireplace they installed at the previous property. The £300 was the remainder. He has written a note to that effect on the copy of the lease in his possession. The £300 was not because the house was shabby. When a new tenant moves in, they want to make the house their own. That was what the £300 was for. He inspected the property before MF and KS moved in and **it didn't need cleaned**. There were no previous holes in the walls. KS and MF did not have his permission to put items on walls. He didn't say they could do as they liked with the property. He said to treat it as their home and decorate as they wish.
10. In response to questions from the Tribunal - The B&Q receipt which has been lodged was not only for the repairs which were needed. LW took a day to carry out the repairs. The items which relate to the repairs on the receipt are £32 for

paint, £6.92 for a paint brush set and £3.50 for sandpaper. In addition, there was the time it took.

Louise Wark's evidence

- 11.** Louise Wark stated – she was the tenant of the property before LM and KS. The property was clean when she left. At the checkout meeting she and RB went in with AC. It was awkward at first. They moved around separately. RB with MF. She was with AC marking up the inventory. KS was floating around. There were holes that were not there when she left. She had not put up any pictures. In relation to the photograph of the front porch entrance, there were marks on the wall from her rabbit hutch. The other marks are nothing to do with her. In the living room, above the fireplace, there were two substantial holes and plaster had come away on both sides. In the photograph of the main bedroom there is a mirror above the bed. There was also a mirror on the wall on the other side of the wardrobes. The blue writing on the inventory which has been lodged is her writing when she marked it up during the checkout. AC was with her and pointed things out as they went round. MF called her to the 3rd bedroom. There were holes on the door. There had been hooks there when she lived there. The hooks had been removed leaving holes. She took the photograph of the extractor fan and cooker hood on 26 February 2020, just after they moved in. It was extremely greasy and there were dead flies. The house had been empty since MF and KS moved out. It took an hour to an hour and a half for her to clean it. With regards to repairing the holes she didn't do it all in one day. It took between half a day and a day - filling, sanding, and painting. The items on the B&Q invoice which related to that work are the paint, paint brushes and sandpaper.
- 12.** In response to questions from Mr Friel – The property had not been decorated when she moved in. She said she would decorate. She did not put up any pictures and didn't see any holes in the walls when she moved in. The notes on the inventory were made during the checkout meeting and she did not add to it or amend it later. She didn't show it to MF and KS. She pointed out the damage over the fireplace to them during the meeting. MF shrugged his shoulders when she did so. She didn't hang anything on the walls. She didn't put anything over the fireplace. She doesn't recall any holes being there when she moved in.
- 13.** In response to questions from the Tribunal – the holes over the fireplace were 10 inches long, 2 inches wide. One on either side. It looked as though something had been pulled off and plaster had come with it. She didn't deal with this. A contractor came and plastered the whole wall.
- 14.** The Respondent also relied on the affidavits lodged – two from RB (referred to in paragraph 5) , two from LW and one from AC. In LW's affidavits she states that the cooker hood and filter was overlooked during checkout and only found when she began to carry out the work. It took over an hour to clean. The repairs to the walls took half a day. The photograph of the cooker hood and filter was taken before she cleaned it following the checkout. AC stated that he was present at the checkout meeting, LW had marked up the inventory during the

meeting and he does not recall RB stating that the whole deposit would be returned.

The Applicants' evidence

15. Mr Friel stated – He and KS were the tenants of the property from 18 February 2018 until 20 January 2020. The property was shabby when they moved in. The conservatory glass fogged up, there were damaged slabs and mole hills in the garden and the kitchen needed replaced. He and KS did a lot to the property. They got access two weeks before the tenancy started to clean and decorate. They did not get a deduction of £300 from the deposit or rent for decoration. They paid the balance of the deposit of £300 to RB in cash in February 2018. RB told them they could do what they wanted to the property. MF had to arrange for a new fuse board as the existing one was illegal. LW showed them round the property before they took it. It was a family home and there were things on the walls. Above the fireplace there were two large screws on the wall. The property had not been decorated for some time. He and KS put up mirrors in the bedroom. They used rawlplugs. They didn't fill in the holes when they left as they were aware that RB intended to re-decorate. They used some existing holes when putting thing up and made some new ones. The condition of the wall over the fireplace was not discussed at the checkout meeting. The wall was not as described by LW. There were 2 screws already in the wall when they moved in. They used them for a mirror. The screws were left when they removed the mirror. It was RB who mentioned the holes on the door in the bedroom to them. He can recall LW making notes when they were at the checkout meeting, but he and KS didn't get to see them. He disputes the alleged condition of the cooker hood. KS runs a cleaning company. The picture is not dated. There are no midges in January. He does recognise the picture as being of the cooker hood. He, KS and two others carried out the cleaning at the property. KS did the cooker. She did clean the cooker hood. However, the cooker hood is very old, and needs replaced. The deposit was discussed with RB following the meeting. He and KS were outside. RB was halfway downstairs. He asked if there had been any problems regarding the return of the deposit and RB said "none at all". He and KS did not point out holes in the walls at check in. They put up a tv in the bedroom with a bracket using 2 screws. There were no holes in the kitchen, just a couple of marks made by **rubber compression which had stuck to the wall. They had sanded those but not painted.** In the sitting room they used existing holes. In the hall there were existing pin holes which had been there for years. There were no holes in the ceilings in the bedrooms.

16. In response to questions from Mr Wood Mr Friel stated that there was no £300 allowance for decoration. The whole deposit was paid. There was no reduction from the first months rent. He did not get permission to carry out work at the property. He arranged the electrical work, but it was paid for by Mrs Baxter. The lease was with both Mr and Mrs Baxter. Clause 9 of the tenancy agreement says it started on 1 February 2018, but they did not get keys until 18 February 2018. Clause 26 of the agreement does refer to a £300 reduction in rent for decoration. The screws in the wall above the fireplace were there at both checkout and check in. The wall was not damaged. The hall was 13 metres

long. They used holes already there. They possibly added one or two more. The shelf was fixed with blue tack. He made holes in the bedroom. 2 screws into the wooden joists. For the mirror over the bed, it was just one hole into the joist. He cannot explain how the cooker hood would deteriorate so much from 20 January until 26 February. They were not in the house then. The reason KS didn't settle at the house was that she had a gut feeling that they would be asked to move.

Evidence of Carol Ann Connelly Brown

17. Carol Ann Connelly Brown stated – she helped KS and MF to clean the property after they got the keys and before they moved in. The house was dirty and needed decorated. She doesn't recall discussing holes in the walls but the wall over the fireplace was really obvious. The dining room floor was really worn, and the kitchen was in a poor condition. The holes in the living room wall above the fireplace were two metal screws. There was a discussion about the need to get something to cover them.

Findings in Fact

18. The Applicants are the former tenants of the property in terms of a tenancy agreement dated 18 February 2018.
19. The tenancy started on 1 February 2018.
20. The Respondent is the owner and former landlord of the property.
21. The Applicants paid a deposit of £900 in connection with the tenancy.
22. The tenancy terminated on 20 January 2020.
23. The Respondent retained £110 of the deposit.
24. The Applicants made holes in the walls of the property and re-used existing holes to put up mirrors and pictures. They did not fill in the holes before vacating the property.
25. The cooker hood and filter were not greasy and covered in flies when the tenancy ended on 20 January 2020.

Reasons for Decision

26. Although it is the Applicant's application, it appears to the Tribunal that the onus is on the Respondent to establish that the Applicant is not entitled to the return of the deposit. A tenancy deposit is paid as security for rent arrears or other losses suffered by a landlord through the failure of a tenant to comply with the tenancy agreement. If a tenancy ends without any such losses having occurred, a tenant is entitled to the return of the full deposit. It is therefore for a landlord

to show that there have been losses for which he is entitled to retain the deposit or a proportion of it. From the submissions, affidavits and the evidence presented at the hearing, it appears that the Respondent accepts that the property was generally left in a clean condition and good state of repair. The Respondent's position is that he was entitled to retain £10 for cleaning the cooker hood and £100 for the materials and time spent repairing the walls and ceiling. Although there was evidence about holes in the wall above the sitting room fireplace, the related repair was not included in the £110, as it was carried out by a contractor and went beyond the work necessary to re-instate the wall.

27. A landlord is entitled to have a property returned to him at the end of the tenancy in the same condition as at the beginning unless some other agreement has been reached by the parties. There is nothing in the tenancy agreement or any other document to suggest that the parties had agreed to a different arrangement. It was suggested by the Applicant that they were told to do what they liked with the property. This is denied by the Respondent. In any event the Tribunal is not persuaded that the Applicants had permission to cause damage and leave the property without re-instating it to its pre-tenancy condition. Clause 51 of the signed tenancy agreement states that the Applicants must leave the property in "as good a state and condition" as at the beginning. The Tribunal heard evidence about remarks allegedly made by the Respondent at the end of the checkout meeting regarding the return of the deposit. However, even if he did state that the whole deposit would be returned, he was not bound by this and was entitled to make a claim on the deposit if he later became aware of damage to the property..

Credibility and reliability of witnesses

28. The Tribunal heard evidence from the Respondent and Louise Wark regarding the condition of the property at the beginning and end of the tenancy. Louise Wark had been the previous tenant and was therefore best placed to comment on the issue. The Tribunal noted that although she was certain that she had made no holes in walls or ceilings (with 2 acknowledged exceptions) and was also certain that the holes listed by her in the inventory were an accurate reflection of the condition at the end of the tenancy, she was unable to confirm whether there were any holes in walls or ceiling when she moved in. This is somewhat surprising, particularly in relation to the wall above the fireplace. There were also some discrepancies between the evidence she gave to the Tribunal and the information in her affidavits. In particular, she stated in her evidence that she had taken the photograph of the cooker hood when they moved into the property on 26 February 2020. However, the affidavit states that the flies and grease on the cooker hood and filter were noted immediately after the checkout and before she carried out the repair work. The Tribunal also had some concerns regarding Mr Baxter's evidence. He gave evidence that the Applicants had been given a £300 re-decoration allowance which was offset against part of the deposit. This was not consistent with the tenancy agreement, which said that it was deducted from the first months rent. The passage of time might explain this confusion, but paragraph 5 of his second affidavit, signed on the seventh of December, also referred to it being a reduction in rent. Mr Baxter

also confirmed in his evidence that Ms Wark went round the property at checkout marking on the inventory the items which were damaged. This inventory was lodged and identified by both him and Ms Wark. However, in his affidavit of 2 December 2020, Mr Baxter firstly confirms that the marked inventory was accurate (paragraph 5) and then states (at paragraph 7) that the holes in the walls were noted “immediately following the checkout” when he “was able to inspect more carefully”. In terms of his evidence about the cost of the materials for the repairs, Mr Baxter first appeared to make a random selection from the items listed on a B&Q receipt and then stated that the cost of materials was minimal. The Tribunal also noted that Mr Baxter gave evidence that there were no holes in the walls at the start of the tenancy. However, in the written submissions made on his behalf in relation to the redecoration allowance, his solicitor stated that Mr Baxter “could reasonably assume that redecoration would have covered and infilled any “very small picture holes” such as are referred to by the Applicant”. The Tribunal also noted some discrepancies between the evidence of Mr Baxter and Ms Wark. Mr Baxter said that the repair work took a day. Ms Wark said in her evidence that it was between half a day and a day, as it was not all done at once. In her affidavit, she said half a day. Mr Baxter also stated, in his affidavit, that the cooker hood was noticed immediately after the checkout meeting. This is consistent with Ms Wark's affidavit, but not her evidence at the hearing.

29. The Tribunal generally found Mr Friel to be credible and reliable. He admitted during his evidence that he and Ms Sneddon had made holes in walls for pictures, mirrors, and a television. He (and Mrs Connelly Brown) gave evidence that the property was shabby and outdated at the beginning of the tenancy. Some rooms had not been decorated for some time. Mr Friel also stated that existing holes were re-used and that the Applicants did not fill in any holes before vacating the property. His evidence regarding the cooker hood was perhaps less persuasive, since he admitted that it was Ms Sneddon who had cleaned the cooker and he did not give the Tribunal any specific details about the steps taken by her regarding same. However, his evidence that the property was thoroughly cleaned did appear to be supported by the photographs which had been lodged.

The Cooker Hood

30. The Tribunal notes that the Respondent was generally satisfied with the level of cleanliness of the property and the photographs submitted by the Applicants appear to show that it was both clean and tidy. The photograph of the cooker hood was produced by the Respondent and is not of particularly good quality. There is also uncertainty as to when this photograph was taken and whether it accurately reflects the cooker hood on 20 January 2020. It does appear to show that the filters are greasy, although the dark shading could be due to age, as was suggested by the Applicant. Furthermore, while it might be understandable for greasy filters to have been overlooked by the Applicants when cleaning the cooker, and for six people to miss it during the checkout meeting, the Tribunal cannot comprehend how the numerous dead flies shown in the picture could have been missed. The Tribunal is therefore not persuaded that the cooker hood was greasy and covered in flies at the date of the checkout

meeting. This being the case, the Tribunal is not satisfied that the Applicants left the cooker hood in an unsatisfactory condition or that the Respondent was entitled with retain part of the deposit in relation to same.

The holes in the walls and ceiling.

- 31.** The Tribunal is not satisfied from the evidence of the Respondents that the walls of the property were completely free of holes when the Applicants took entry. However, the Tribunal is satisfied that the Applicants did make a number of additional holes in several rooms. They also re-used existing holes which may have made them larger and more noticeable. They did not take any steps to repair this damage. The Respondent is therefore entitled to withhold part of the deposit to cover the cost of this repair work
- 32.** The Respondent's evidence about the cost of the work in question was somewhat vague. Although there was reference to three items on the receipt, this was qualified by the comment that the cost of the materials was minimal. This suggests that he was not trying to persuade the Tribunal that these three items had only been used on the repairs. The claim that £100 is a reasonable figure is largely based on the amount of time spent by Ms Wark, rather than the negligible cost of the materials. It is not clear from the evidence how much time was actually spent repairing the holes which the Applicant made or re-used. Based on the information and evidence, the Tribunal is not persuaded that the work in question could justify a cost of £100. The Tribunal concluded that the materials for the repairs cost very little, and that Ms Wark probably spent no more than 3 or 4 hours on the task. This being the case, a cost of £50 appears to be a more realistic and reasonable figure.
- 33.** The Tribunal therefore determined that the Respondent was only entitled to retain the sum of £50 for the cost of filling in, sanding and painting over the holes made or re-used by the Applicants in the walls of the property. The Tribunal therefore determines that an order for £60 should be made in favour of the Applicants.

Expenses

- 34.** Rule 40 of the Procedure Rules states - “

 - (i) The First-tier Tribunal may award expenses as taxed by the Auditor of the Court of Session against a party but only where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense.”
- 35.** The Applicant's request for expenses appears to be unrelated to the conduct of the case by the Respondent and instead focuses on the costs incurred by them in relation to work carried out at the property and having to find somewhere to stay and storage for furniture when they were between tenancies. In addition,

they state that they have had to take time off work to participate in the Tribunal hearings. These are not grounds for expenses to be awarded. The Applicants chose to make the application. This led to a requirement to attend hearings. None of the losses referred to relate to the Respondents conduct of the case.

36. The Respondents request for expenses is based on the costs he has incurred, particularly the cost of instructing a solicitor to represent him in the proceedings. The Respondent points out that the Applicants could have used the adjudication process offered by SDS, which would have been free and less time consuming. The Respondent would not have required to instruct a solicitor. The Tribunal is not persuaded by this argument. Firstly, the adjudication process is not mandatory. The Applicants were told they could use it or apply to the Tribunal and they chose the latter. Secondly, the Tribunal process is also free, and parties do not require to be legally represented. Indeed, the Applicants have not been. The expense to which the Respondent has been put has been of his own choosing and the Applicants did not cause it. In any event, Rule 40 permits an award of expenses only when a party through “unreasonable behaviour in the conduct of the case” has caused the expense. The Applicants were entitled to make the application. They have been partially successful. They have not behaved unreasonably in the conduct of the case. When there was an issue about their photographs and videos, they elected to proceed without them rather than postpone the hearing. On the other hand, some delay was caused by the Respondent when he failed to lodge sufficient evidence to support his position or provide his solicitor with full instructions prior to the CMD.

37. The Tribunal is therefore satisfied that Rule 40 does not apply and that neither party is entitled to an award of expenses.

Decision

38. The Tribunal determines that an order for payment of the sum of £60 should be made in favour of the Applicant.

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

10 December 2020

