

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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

**Chamber Ref: FTS/HPC/CV/22/4328**

**Re: Property at 67 Castle Court, 44 Broomburn Drive, Glasgow, G77 5JH (“the Property”)**

**Parties:**

**Ms Sophia Rafique, 67 Castle Court, 44 Broomburn Drive, Glasgow, G77 5JH (“the Applicant”)**

**Ms Lai Ki Soon, Fuk Tak Soon, 112D Fenwick Drive, Barrhead, G78 2PT; 7C Castleton Court, Castleton Crescent, Newton Mearns, G77 5JX (“the Respondents”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant failed to establish liability on the part of the Respondents for payment and therefore dismissed the application.**

**Background**

1. The Applicant made an application to the Tribunal dated 6 December 2022 seeking an order for payment in terms of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules and Procedure) Regulations 2017 (“the 2017 Rules”).
2. This application previously came before the Tribunal for a Case Management Discussion (“CMD”) on 15 May 2023 and a Hearing 7 July 2023. The Tribunal issued a Note and Notice of Direction following the CMD and a Note following the Hearing.

## **The Hearing – 12 September 2023**

3. The Hearing took place by video conference. The Applicant participated in the Hearing and represented herself. The First Respondent participated in the Hearing and represented herself and the Second Respondent. The Tribunal arranged for the attendance of a Cantonese interpreter (Ms Siu Ying Tervit) to assist the First Respondent in following proceedings.
4. The Applicant indicated that she intended to give evidence but did not intend to call witnesses; the First Respondent indicated that she intended to give evidence and did not intend to call other witnesses. The evidence given by the parties is summarised below. At the conclusion of the evidence, the Tribunal adjourned the Hearing to enable the members to consider the evidence given. The parties were advised that a written decision with a statement of reasons would be issued to parties.
5. The purpose of the Hearing was to determine whether the Respondents were liable to pay the Applicant for damage to the property and some items in the property.

## **Summary of evidence**

### **Ms Sophia Rafique**

6. The Applicant referred the Tribunal to video evidence lodged. There were 3 videos available which showed the property before the Respondents' tenancy started and several videos taken by the Applicant on 2 July 2022 after the Respondents had left the property. She refunded the Respondents' full deposit after they vacated the property. The Respondents kept 3 cats which had been brought from Hong Kong. The Applicant did not authorise the Respondents to keep cats in the property. Following the Respondents' departure, the Applicant discovered a number of problems with the contents of the property:-
  - (a) the bedside table was dirty and damaged. It was 3- years old. She has not replaced the bedside table, but it cost £50.
  - (b) the bedroom door was damaged. The Applicant has not yet replaced the damaged door, but has obtained an estimate to buy a new door which will cost £279.81. She has not made enquiries about the cost to repair the door.
  - (c) the bathroom was dirty and there was mould on the bathroom walls.
  - (d) the kitchen tap was dirty.

- (e) the fridge was dirty and damaged. The Respondents did not report any issue with the fridge. It was approximately 5 years old. The cost of a new fridge is £349.
  - (f) the bathroom ceiling had been painted with paint that was not suitable for bathrooms.
  - (g) the dining room table and coffee table had an adhesive covering applied to them which was made to look like oak. These adhesive coverings cannot be removed without leaving a mark on the wood. She has not replaced these items because she cannot afford to do so. She claims £998 from the Respondents because that is how much these items cost new.
  - (h) a bedframe had been dismantled by the Respondents and when the Applicant reassembled it, she discovered that the frame was broken. That bedframe was approximately 6 years old. She replaced the bed frame with a bigger bed and mattress, which cost £609.95.
  - (i) the Applicant bought replacement bedroom furniture, mattresses and bedding for her children at a cost of £948.12. She did not know if washing the bedding would have resolved the issue with cat hair and she chose to replace all of the bedding.
  - (j) the heavy lined curtain need replaced because of cat hair. She has not yet replaced these but they cost £2,000.
  - (k) the shower did not work and was replaced.
  - (l) the dishwasher did not work and was replaced at a cost of £232.50. The Respondents had not reported any issue with the dishwasher. An engineer told her that there was a problem with the pump in the dishwasher and it was cheaper to replace it rather than having it repaired. The engineer did not report any mistreatment of the dishwasher.
  - (m) The Respondents had replaced a toilet seat with the wrong size of seat. The Applicant has not yet replaced that, but the cost of a new one is £34.99.
7. The carpets throughout the property were approximately 7 years old but had been kept in good condition. On 3 July 2022, the Applicant ordered new carpets for the entire property at a cost of £3,567.89, plus fitting of £446.05. Although the Respondents told her that they had washed the carpets, they were still dirty when the Applicant recovered possession. She and her son had developed a rash which she believes was caused by cat hair, so she made a decision to replace all carpets. She did not see any point in having the carpets professionally cleaned because cats had been in the property.
8. The Applicant replaced the sofa because it was water damaged and had cat hair on it. It was approximately 2 years old. She is claiming £2,379.98 from the Respondents, which was the original cost of the sofa. She replaced the sofa with a second hand corner sofa which cost £1,000.

9. Some of the walls and ceilings had been painted to cover marks on them and the colours were not the same as the original colour of the walls. She had the whole property redecorated at a cost of £2,350.
10. The Applicant paid a cleaner £357.17 to professionally clean the whole property because it had not been cleaned properly.
11. The Applicant holds the Respondents responsible for all of the costs she has incurred and the value of items still to be replaced because the Respondents breached the tenancy agreement. In particular, they breached clause 33 by keeping animals in the property without prior written consent. They also breached clause 27 because they made alterations to furniture without consent.

Ms Lai Ki Soon

12. Before the Respondents moved into the property, they were not given a detailed inventory of items. The Applicant gave them a video showing the condition of the property. The Applicant told them that the furniture was old and had been used for many years. Only part of a wall had been repainted when the Respondents moved in and the rest of the property had not been painted. As the tenancy was coming to an end, the First Respondent hired a professional carpet cleaning machine at a cost of £130 and she cleaned the carpets in the property. When the Respondents left the property, they left it in the same condition it was in at the outset of the tenancy. The Respondents verbally agreed with the Applicant that they could keep cats in the property. The First Respondent referred to what's app messages which the parties exchanged in which cats are mentioned.
13. Responding to some of the heads of claim, the First Respondent's position was as follows:
  - a) The bedside table had been cleaned and was not damaged by the Respondents.
  - b) the bedroom door was already damaged when the Respondents moved into the property.
  - c) She cleaned the bathroom.
  - d) She cleaned the kitchen.
  - e) The fridge was already damaged when the Respondents moved in. The Respondents did not use the fridge. They brought 2 fridges of their own which were kept in the living room and could be seen in the video footage.
  - k) the shower was in working order when the Respondents left the property.

- l) The Respondents only used the dishwasher twice. They are not in the habit of using a dishwasher.

## **Findings in fact**

- 14. The parties entered into a private residential tenancy which commenced 30 January 2021 and ended on 2 July 2022.

## **Reasons for decision**

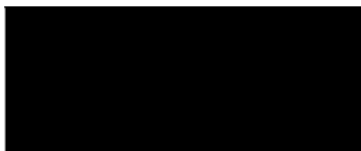
- 15. The onus of proof rests with the Applicant to establish her claim for the various heads of claim referred to. Having considered each of those heads of claim in turn, in light of the evidence, the Tribunal was not satisfied that the Applicant has discharged the onus of proof.
- 16. Clause 24 of the tenancy agreement relates to the contents and condition of the property. It provides "*the Tenant agrees to replace or repair (or, at the option of the Landlord, to pay the reasonable cost of repairing or replacing) any of the contents which are destroyed, damaged, removed or lost during the tenancy, fair wear and tear excepted, where this was caused wilfully or negligently by the Tenant, anyone living with the Tenant or an invited visitor to the Let Property....Items to be replaced by the Tenant will be replaced by items of equivalent value and quality.*"
- 17. Some of the items claimed for by the Applicant have not been replaced and the Applicant is claiming the value of new items. The Applicant is not entitled to betterment and therefore the Applicant is not entitled to the sums claimed in relation to the fridge, coffee table, dining table, bed frames, bedroom furniture, bedding, curtains, carpets and sofa.
- 18. The Applicant relied on video evidence to demonstrate the condition of the property and some items in the property after the Respondents vacated. However, the video footage taken at the outset of the tenancy does not show the same level of detail. For example, the video footage after the Respondents left the property shows a close up of a bedside table and of the bathroom tiles. The video footage at the outset of the tenancy does not show this level of detail and shows a quick tour around the property. The video footage lodged by the Respondents appears to show the property in good order at the end of the tenancy but again, there is no detailed footage of individual items within the property. It was therefore difficult to attach any weight to the video evidence. The Respondents did not accept that the dishwasher or shower were not

working. There was no evidence that the Respondents had caused damage to the dishwasher or shower.

19. The parties were in dispute about whether the Respondents had been authorised to keep cats in the property. The Respondents position about the cats was supported to some extent by the exchange of messages which the Respondents lodged. The exchange appears to confirm that the Applicant was aware that cats were staying in the property and there was no indication in the messages that the Applicant was unhappy about that. The Tribunal preferred the evidence of the First Respondent in relation to this matter.
20. The Applicant chose to replace a number of items, such as carpets throughout the property, the sofa, beds, mattresses and bedding. The Applicant did not consider having these items professionally cleaned.
21. Some of the items claimed for may have been the subject of wear and tear, but there was insufficient evidence before the Tribunal to establish that any damage went beyond wear and tear to the extent that the items had to be replaced. Where the evidence of the Applicant was at odds with the Respondent, the evidence of the Respondent and her witnesses was preferred.
22. For all of the reasons set out above, the Tribunal refuses the application and makes no order for payment.

### **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.**



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**Legal Member/Chair**

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**14 September 2023**

**Date**