



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/CV/20/2669**

**Re: Property at 1/81 Donaldson Drive, Edinburgh, Midlothian, EH12 5FA (“the  
Property”)**

**Parties:**

**Dr Jim Coke, 30 Edenham Way, London, W10 5XB (“the Applicant”)**

**Mr Daniel Smith, Mr Matthew Smith, Ms Kathryn Smith, Ms Rachel Smith, The  
Old Manse, Oyne, Inch, Aberdeenshire (“the Respondents”)**

**Tribunal Members:**

**Lesley-Anne Mulholland (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order against the Respondents for payment of the undernoted sum to the Applicant:

Sum of £2,470.00

**Background**

The applicant entered into a private rental agreement with the respondents to occupy the property at 1/81 Donaldson Drive, Edinburgh, Midlothian, EH12 5FA. He gave a deposit to the respondents in the sum of £2,500. The respondents deposited this into a safe deposit scheme.

On 28 December 2020, an application was made by the tenant for a payment order. He wanted the return of the full amount of the deposit less any deductions agreed by the Tribunal. The applicant disagrees that the sum of £950.31 should be deducted

from the deposit for 11 items which include, amongst other things, damage, cleaning and the cost of replacement items. The applicant accepts that he is liable to pay the unpaid energy bill in the sum of £357.31. The respondents claimed a deduction of £45.00 for a replacement freezer drawer however at the case management discussion on 3 March 2021 it was agreed between them that £30 was fair and reasonable. This leaves a further 9 items to consider.

We have considered all the papers before us, including the detailed written submissions by the parties and the oral evidence before us at the hearing and including all that was said at the case management discussion, before reaching a decision. Reference to the papers shall be made where required. A failure to mention any part of the papers before us should not be taken as a failure to consider them.

## **REASONS AND DECISION**

### **The Hearing**

The applicant attended the hearing, as did the respondent's representative, Mr Smith. The hearing preceded remotely by telephone conference. We are grateful to those participating in the hearing for their patience and understanding. We were satisfied that the hearing was fair and that all participants were able to put their points across and hear each other. No obvious issues arose.

The applicant set out his case and the reasons why he is seeking a payment order. He explained that he continues to dispute that he left the property in anything other than a reasonable condition taking into account the fair wear and tear you would expect to see from having lived in a new property from the 30th of August 2019 until the 1st of March 2020. He accepts that he has not paid the 'Welcome Energy Bill' in the sum of £357.31 and agrees to pay this from any monies returned to him from the safe deposit scheme (see item 1 below).

The applicant maintains his position that he left the property in a good condition. It was cleaned to a reasonable standard and any issues arising result from fair wear and tear and/or accidental damage should not be deducted from the deposit. He reminded us on several occasions that the property was brand new upon entry and it would be impossible to maintain it to this standard bearing in mind he lived there from 30 August 2019 to 1 March 2020.

The respondent relies upon the reports from Pinstripe Inventory Specialists who carried out an inspection before and after the tenancy, and the email he received from the Marcus Fenton on behalf of Rettie and Company dated 18th of March 2020, advising him on the cost of restoring the property. He does not accept that the items listed represent a deterioration caused by fair wear and tear. He maintains that the applicant is liable to make good the property.

It is helpful to set out in detail the items in dispute. These are:

1. Unpaid Welcome Energy Bill	£357.31
2. Cleaning invoice	£ 68.00
3. Replacement freezer drawer	£ 45.00
4. Circular burn mark	£150.00
5. Scratch and burn mark near window	£ 50.00
6. Marks on stairs	£100.00
7. Mark on carpet near ensuite door	£ 25.00
8. Mark below ensuite light & on door	£ 25.00
9. Mark on ensuite wall	£ 50.00
10. Marks on wall at entrance	£ 5.00
11. Mark from kitchen bin	<u>£ 75.00</u>

**£950.31**

The parties agree that the reasonable cost of replacing the freezer drawer is £30 and not the £45 claimed for (see item 3).

### **The Tenancy Agreement**

The relevant parts of the Tenancy Agreement are:

#### Clause 25 CONTENTS AND CONDITION

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 by items of equivalent value and quality.

#### Clause 17 REASONABLE CARE

The Tenant agrees to take reasonable care of the let property and any common parts, and in particular agrees to take all reasonable steps to:

- keep the Let Property adequately ventilated and heated;
- not bring any hazardous or combustible goods or material into the Let Property, notwithstanding the normal and safe storage of petroleum and gas for garden appliances (mowers etc. ) barbecues or other commonly used household goods or appliances;
- not put any damaging oil, grease or other harmful or corrosive substance into the washing or sanitary appliances or drains;
- prevent water pipes freezing in cold weather;
- avoid danger to the Let Property or neighbouring properties by way of fire or flooding;
- ensure the Let Property and its fixtures and fittings are kept clean during the tenancy;
- not interfere with the smoke detectors, carbon monoxide detectors, heat detectors or the fire alarm system;

- not interfere with door closer mechanisms.

#### Clause 38 FAILURE TO MAKE GOOD

Where the tenant fails to replace or repair broken or damaged items, or to arrange cleaning or other remedial works above and beyond normal wear and tear, prior to the end of the tenancy, the landlord and their agent will do so and will levy an administration charge of £15 plus VAT for each replacement item and or contractor instructed to undertake the works. This constitutes a reasonable fee for arranging contractor quotes, instructing works, key handling, checking completed works, paying and handling invoices and the Landlord or agent's time. Such fees will be claimed from the deposit where applicable.

The applicant has produced many photographs of the state of the property at the end of the tenancy. These show that the property was in good repair and clean.

A check out report has been produced by 'Pinstripe, Inventory Specialists' dated 3 March 2020. It is important to note here that in the notes section at page 2, it states that at the time of the checkout a comparison would be made between the original inventory and the state of the property and contents at the commencement of the tenancy. It is important to remember that it is undisputed that the applicant took up occupancy in a property that had been refurbished and that the applicant was the first person to occupy it since that refurbishment. The report therefore has to be considered in this context.

Under 'Part 2, Schedule of Condition' the overall condition at check in is described as good to excellent and the condition at checkout is described in the same way. It is noted that some marks were recorded in places and some very light cleanliness issues were noted. The schedule then goes through individual items all of which are noted as being in the same condition at checkout.

The property cleanliness is described as commercially clean with some very minor cleanliness issues noted.

We shall consider each item in turn.

#### **2. Cleaning invoice**

**£ 68.00**

The Pinstripe Report records that in the kitchen and living area, the walls had some light grubby print marks at the steps and the left hand side of the lounge radiator. The windows/sill had some water marks externally. The units in the kitchen and living area had light debris and grubby marks inside the left hand side of the fridge, light grubby marks to doors in places and light grubby marks to the edge of the drawer under the hob. The oven had very light food residue to the top of the oven grill and the extractor hood had some greasy spot marks. The washing machine had some light grubby marks inside the soap drawer. The toilet had some light grubby marks inside. The cubical had some light grubby marks to the shower screen. The flooring had some light debris near the top of the stairs. The door to bedroom 1 had some light grubby

print marks to the interior of the cupboard door and the ensuite walls were marked on the left hand side of the shower at a low level. The ensuite toilet had some light grubby marks to the underside of the toilet seat and the shower cubicle screen had slight grubby marks.

We are satisfied that the overall condition of the property was good and the level of cleanliness was reasonable bearing in mind the appellant had lived there for around 5 months. We took the view that the report by Pinstripe seemed to take the view that any marks at all on a brand new property which required cleaning were for the applicant to recompense.

We rely on Clause 38 of the tenancy agreement - failure to make good - that the applicant was not required to arrange cleaning to put the property back into a new condition. We are satisfied at the applicant took steps to clean the property and that he left the property in a reasonable state. Accordingly, we are satisfied that the cost of further cleaning in the sum of £68 should not be met by the applicant.

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| <b>4. Circular burn mark</b>                | <b>£150.00</b> |
| <b>5. Scratch and burn mark near window</b> | <b>£ 50.00</b> |
| <b>6. Marks on stairs</b>                   | <b>£100.00</b> |

These claims relate to the wooden flooring. The condition at checkout records that a ring mark was found near the radiator at the window which is easily seen in the photograph. It is not described as a burn mark.

An email dated 18 March 2020 has been produced by Marcus Fenton. He is described as a Portfolio Manager and is employed by the Letting Agent, Rettie and Co. There he describes the circular mark as a burn mark. He claims that a flooring man attended and provided an opinion that the flooring would be made worse by carrying out the repairs and that the best course of action would be to seek compensation in the sum of £150, £50 and £100 respectively.

The respondent has failed to provide the written opinion from the 'flooring man' and therefore we have no way of knowing his level of expertise or how the conclusion was reached that items 4 and 5 were burn marks. Even if we accept that the marks were caused by a burn, the terms of the tenancy agreement require the respondent to demonstrate that the damage has been caused wilfully or negligently. No such submissions were made to us and the onus lies on the respondents to demonstrate that the damage has been caused wilfully or negligently if they are to succeed in their claim. Accordingly we are not satisfied that the respondents have demonstrated that items 4 and 5 have been caused wilfully or negligently.

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| <b>7. Mark on carpet near ensuite door</b> | <b>£ 25.00</b> |
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This relates to bedroom 1. The report describes the flooring as a beige fitted carpet. The condition at checkout is described as the same as check in and records a mark



Having considered all of the evidence, individually and in the round, we are satisfied that a payment order shall be made in the sum of £2500 less the cost for replacing the freezer door in the sum of £30. The respondent asked the applicant to pay the Welcome Energy Bill in a sum of £357.31 from the amount of deposit due to be returned to him. Accordingly we have not deducted this sum but record here that the applicant provided an undertaking that he would pay this bill. Accordingly we are satisfied that a payment order in the sum of £2470 should be granted to the applicant against the respondent.

### **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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Lesley-Ann Mulholland  
Legal Member

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Date

15 April 2021