



**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 (Act)**

**Chamber Ref: FTS/HPC/CV/19/0062**

**Re: Property at 27 Clova Crescent, Kingswells, Aberdeen, AB15 8TJ (“the  
Property”)**

**Parties:**

**Dr Stephen Miles, Am Wallnerberg, 93077 Bad Abbach, Bad Abbach, Germany  
 (“the Applicant”)**

**Mr Enyioma Oporum, 23 Concraig Gardens, Kingswells, Aberdeen, AB15 8LG  
 (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that the Respondent pay the sum of £315.31 to the  
Applicant.**

**Background**

This is an application under Rule 70 of the Tribunal Procedure Rules and section 16  
of the Act in respect of alleged damage and cleaning to the Property during the  
tenancy.

The Tribunal had regard to the following documents:

1. Application received 10 January 2019;
2. AT5 dated 9 July 2013;
3. Tenancy Agreement commencing 15 July 2013;
4. Check in Report dated 15 July 2013;
5. Check out Report dated 5 November 2018;
6. Written Submissions from both Parties and accompanying documents;

## 7. Safe Deposit Scotland Determination.

The case had called for a CMD on 16 April 2019 at which the following issues had been identified:

1. Whether, and to what extent, the Property and contents had been damaged by the Respondent during the period of the tenancy; and
2. What sum (if any) should reasonably be awarded to the Applicant in respect of any such damage found to be his responsibility by the Tribunal at a Hearing.

### Hearing

Both Parties appeared and represented themselves.

The Tribunal ran through the issues identified at the CMD and the productions to be referred to. An issue arose due to the late lodging of additional written 7 representations by the Respondent 6 days before the Hearing. The Respondent also sought to lead evidence from a witness whom he had not given 7 days' notice of.

The Applicant objected to the written submissions being allowed given that the Tribunal had made it clear that all documents and witnesses should be notified 7 days prior to the Hearing.

The Respondent accepted he had been so notified. The written submissions were only 1 day late, and the witness would speak to the condition of the Property inside and out. The witness had undertaken work on the Applicant's behalf to the Property.

The Tribunal considered the position and decided that the written submissions would be allowed late. The Respondent could simply have read these, and they would be admitted in evidence, so the overriding objective favoured their allowance. The Tribunal determined that there was no need to hear evidence from the witness as the Respondent would be able to give the best evidence, allowing the witness would necessitate the adjournment of the Hearing as the witness was not present and lived in Kingswells. The Hearing was only listed for the morning and the Tribunal had other business in the afternoon. The case had been ongoing for almost a year. In accordance with the overriding objective the Tribunal determined that the Hearing proceed without the witness.

The Applicant was seeking the sum of £694.71 calculated as follows:

1. Cleaning - £260;
  2. Damage to Property or Contents - £470.85;
  3. Gardening - £255;
  4. Missing Items - £28;
- TOTAL = £1,013.85

LESS £319.14 recovered from Safe Deposit Scotland

The various headings were broken down into particular items of loss as detailed in the Paper Attached to the Applicant's Claim Form.

Both Parties then gave their evidence and had the opportunity to question each other.

Having heard their evidence and considered the documentary evidence the Tribunal made the following findings in fact:

1. The Parties entered a tenancy in respect of the Property commencing 15 July 2014 and ending 2 November 2018;
2. A Check in Report had been prepared in respect of the Property dated 15 July 2013;
3. A Check out Report had been prepared dated 5 November 2018;
4. Safe Deposit Scotland made a determination in respect of the Deposit and awarded the Applicant the full deposit in respect of rent arrears of £530.86 and £319.14 in respect of cleaning, damage to property or contents, gardening, and missing items;
5. Neither Party had challenged the determination made by Safe Deposit Scotland;
6. The Property was left in an unclean state by the Respondent and required cleaning;
7. The reasonable cost of cleaning was £260 which was vouched by the Applicant;
8. The latch in the master bedroom that had broken was fair wear and tear;
9. The Cooker Hood was operational at the commencement of the tenancy and broken by the Respondent during his tenancy. The reasonable cost attributable to the Respondent was £46.45 out of the total cost of £92.20 incurred by the Applicant to replace;
10. The Property was left in need of decoration by the Respondent and the Applicant incurred reasonable costs of £100 for redecoration;
11. The Respondent damaged the settee within the Property the cost of which was reasonably assessed at £60;
12. The mattress within the Property was 10 years old and unusable;
13. Exterior damage to the door of the Property was negligible and of no value;
14. The window frame was damaged by the Respondent during the tenancy and he was responsible for the reasonable cost of repair at £10;
15. The walls were chipped around a light switch in the Property during the tenancy and accordingly the responsibility of the Respondent. The costs of repair were reasonably assessed at £10;
16. The garden of the Property required to be patched and tidied due to the fault (in part) of the Respondent. The Applicant incurred costs of £90 for tidying the flower beds and £165 for re-seeding the lawn. The reasonable costs attributable to the damaged patch of the lawn were £30 and £90 for the tidying of the garden;
17. Items were missing from the Property on termination of the tenancy valued at £28.

The Tribunal accepted and preferred the evidence of the Applicant. He presented his evidence in a clear, consistent and credible manner. He had provided Check in and

Check out Reports. Whilst the Respondent disputed these and claimed he did not accept them the Tribunal found that he had received copies of both Reports and had not sought to contest these until the current proceedings.

The Reports evidenced the state of the Property, contents and gardens at entry and exit. They also provided professional assessments of costs of repairs and damages.

In addition, the Respondent had not sought to dispute the findings of the Safe Deposit Scotland Scheme Adjudication which had found him responsible for the cleaning, damages and repairs to the Property.

The Tribunal accordingly accepted and preferred the evidence of the Applicant and found that the cleaning, damages and repairs, gardening and missing items were due to the actions/inaction of the Respondent as detailed in the Reports.

It appeared to the Tribunal that the sums being sought by the Applicant were reasonable although the Tribunal modified them in the following respects:

1. The balance of £30 was reasonable for the cleaning;
2. Cooker Hood - £46.45 was reasonable for the replacement of the hood.
3. £100 was reasonable for the proportion of the redecoration the Respondent should be responsible for in the Property as the Property would have needed redecoration at the end of the tenancy and the Check in Report had identified the state of the décor at commencement;
4. £60 was a reasonable valuation for the damage to the settee;
5. The mattress was 10 years old and had zero value at the end of the tenancy;
6. The lawn had been damaged by the Respondent where the trampoline had been situated as was evident from photographs produced. The cost of reseeded should reflect the area needing repair and the generally poor state of the lawn at Check in. £30 was a reasonable share of the cost;
7. The garden needed to be tidied after the tenancy. This had been the Respondent's responsibility. The amount of £90 was a reasonable cost.
8. Material missing from the Property as identified by the Check in/out Reports were reasonably valued at £28.

The Tribunal awarded £404.45 and deducted the sum of £89.14 which the Applicant had received from the deposit towards these costs (under exclusion of the cleaning costs recovered of £230).

## **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.**

A Strain

**29 October 2019**

---

**Legal Member/Chair**

---

**Date**