



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2016.**

Chamber Ref: FTS/HPC/CV/19/2963

**Re: Property at Flat 3, 116 St Andrew's Drive, Glasgow G41 4RB ("the
Property")**

Parties:

**Mr Abdul Khaliq Chaudry and Mrs Ghazala Nasreen Chaudry residing at 71
Ophelia Drive Heathcote Warwick CV34 6XJ ("the Applicants**

**Mr Naveed Nasir residing at 71 Fotheringay Road Glasgow G41 4LQ ("the
Respondent")**

Tribunal Members:

Lesley Ward (Legal Member) and Eileen Shand (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that the respondent shall make payment to the
applicants the sum of four thousand eight hundred and fifty five pounds eighty
seven pence (£4855.87) with interest at the rate of 4.75 % per annum from 4
February 2020 until payment.**

1. This is an application in terms of s16 of the Housing (Scotland) Act 2016, 'the Act' and rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Procedure Regulations 2017 'the rules'. Miss Kirsty Donnelly solicitor attended on behalf of the applicants. The applicants did not attend. Miss Donnelly had one witness, Mr Muhammad Nawaz, the managing director of Martin and Company, Glasgow West End, the applicants' letting agent. The respondent attended and represented himself.
2. The tribunal had before it the following copy documents:
 - Rule 70 application

- Rent statement
 - Short assured tenancy agreement
 - Rent statement
 - Invoices
 - Sheriff officers fee note
 - Fee notes issued by the applicants solicitors regarding the rule 66 and rule 70 proceedings.
 - Check our report dated 3 May 2019
 - Inventory report dated July 2017.
3. The following directions were made by the tribunal at the case management discussion on 22 November 2019, the documents to be lodged by 20 December 2019:
 4. The Applicants were required to provide:
 1. A rent statement giving details of how the sum of £3955.07 is arrived at including when the arrears accrued.
 2. Copy receipts for all of the invoices lodged and the various heads of claim with the exception of the legal and sheriff officer invoices and the order details relating to the purchase of the dehumidifier.
 3. A copy of the sheriff officer's report regarding the eviction on 2 May 2019.
 4. Copies of inspection reports by Martin and Company dated 13 October 2018 and 22 March 2018.
 5. A copy of any documentation from the deposit scheme regarding the return of the deposit of £1000 paid by the respondent at the commencement of the tenancy.
 6. A list of witnesses who will give evidence at the hearing on 4 February 2020.
 5. The Respondent was required to provide:
 1. Any copy emails or other information he has which shows or tends to show that he contacted Martin and Company during the course of the tenancy (July 2017 until February 2019) to draw their attention to condensation in the property.
 2. Any copy emails or other information he has which shows or tends to show that he contacted Martin and Company during the course of the tenancy (July 2017 until February 2019) to draw their attention to any items in the property which he did not require the use of and which he wanted removed.
 3. Any evidence that he has regarding him being unable to gain access to the property around March/ April 2019 when the locks were alleged to have been changed.
 4. A list of witnesses who will be giving evidence at the hearing on 4 February 2020.
 6. Both parties had lodged further documents in compliance with the directions. The respondent had lodged an email dated 6 January 2020 which in turn contained copies of emails between the respondent and the applicants' letting agent from

December 2018 and February 2019. The applicants lodged an inventory of productions with the following on 20 December 2019:

- Rent statement
- Receipted invoices and proof of payment
- Sheriff Officer's report dated 3 May 2019.
- Inspection reports dated 13 October 2017, 22 March 2018 and 14 January 2019.
- Safe Deposit Scotland Protection Certificate and Correspondence.
- List of witnesses.

7. Preliminary matters.

The tribunal noted that the productions lodged by the respondent in compliance with the direction were late. The tribunal allowed them to be received late in accordance with the overriding objective, the applicants' solicitor having no objection.

8. Miss Donnelly suggested that hearing should proceed on the basis that the terms of the tenancy agreement between the parties are agreed. This seemed sensible and the respondent did not make any objection.

9. Findings in fact and law

1. The second named applicant is the owner of the property. The first named applicant is the landlord of the property.
2. The first named applicant and the respondent entered into a short-assured tenancy on 25 July 2017 for let of the property for the initial period of 12 months from 21 July 2017 until 20 July 2018 and month to month thereafter.
3. The agreed rent was £900 per month.
4. Rent arrears of £3955 accrued from 21 December 2018 until 2 May 2019.
5. An eviction order in terms of rule 66 was granted by the tribunal on 26 February 2019.
6. The respondent left the property around mid-march 2019 and took most of his possessions with him.
7. The applicants' letting agents arranged for the locks to be changed on 1 April 2019 and a notice to be put in the door of the property.
8. The respondent returned to the property around 9 April 2019 and asked the applicants letting agent to give him the keys.
9. The respondent failed to return those keys.
10. Sheriff Officers formally evicted the respondent from the property on 2 May 2019 at a cost of £587.98 to the applicants.
11. The applicants also incurred legal fees of £48 for their solicitors to instruct the sheriff officers.
12. The respondent failed to provide his forwarding address to the applicants in breach of the terms of the lease. The applicants incurred the trace fee of £25.

13. The respondent left the property in a dirty condition in breach of the terms of his lease and the applicants incurred £320 in having the property cleaned.
14. The respondent damaged a drawer in the kitchen in breach of the terms of his lease which cost the applicants around £60 to repair.
15. The respondent left various belongings in the property in breach of the terms of his lease which cost the applicants £70 to have removed.
16. The respondent failed to adequately ventilate the property in breach of the terms of his lease and caused damage to the wallpaper and paintwork in the bedrooms. The applicants incurred around £600 in redecoration costs and £149.89 in purchasing a dehumidifier to remove the condensation.
17. The deposit of £1000 was retained by the applicants.
18. The lease provides for payment of contractual interest of 4 % above HSBC base rate.

10. Reasons

The tribunal heard oral evidence from Mr Nawaz on behalf of the applicants. Mr Nawaz had very limited knowledge of the property and had not actually visited the property before, during or immediately after the respondent's occupation of it. He had visited recently to inspect the redecoration work as the property is now being re let by his company. Most of Mr Nawaz's evidence related to the procedures followed by the letting agent with regarding to the inspection reports. He spoke to the report, which was prepared at the start of the tenancy, the 'inventory report' and at the conclusion, the 'check out report'. There were also various interim inspection reports which consisted of a series of photographs of the property with no written commentary apart from the date on which they were taken.

The condensation problem

11. Mr Nawaz was able to speak to the various photographs lodged and to give his opinion on the cause of the black marks visible on the bedroom wallpaper. He made reference to the photographs which formed part of the inventory at the start of the tenancy and the checkout report at the end. In his view the black marks were caused by condensation, He attributed the likely cause of the condensation to be due to poor ventilation. He noted that the main bathroom to the property did not appear to be used. He also noted that the respondent and his family were using the ensuite as their only bathroom. It does not have a window although it does have an extractor fan. Mr Nawaz did not consider that there was any dampness in the property and that the condensation problem was caused by the manner in which the respondent used the property. He acknowledged that the respondent had contacted his office to complain about condensation and dampness and the applicants had refused to incur the cost of a specialist report.
12. The respondent disputed that the damage to the décor was caused as a result of poor ventilation. He stated that he and his family were unable to use the main bathroom because the applicants had left items in the property that he did not

require and that they had declined to remove them. This meant that one of the bedrooms in the property could not be fully utilised by his family and consequently bikes and other items that may have been stored in the bedroom were stored in the family bathroom and rendering it out of use. The respondent's evidence was that within 7 days of taking entry to the property he notified the letting agent that the property was not clean and there were items of furniture in it that he did not require. This was disputed by Mr Nawaz who gave evidence that his office had not received any report to this effect. The respondent appeared to use the terms 'dampness' and 'condensation' interchangeably and in the emails that he lodged both terms are used.

13. The tribunal considered the evidence regarding this head of claim and decided on the balance of probability that the damage exhibited in the photographs was caused by condensation as a result of poor ventilation. The tribunal noted that Mr Nawaz is an experienced letting agent and although he had not inspected the property, he was aware of his company's procedures and was able to speak to various reports which had been compiled and lodged with the tribunal containing photographs of the condensation. The tribunal preferred his evidence and found it to tie in logically with the photographs lodged. The tribunal found the respondent's evidence regarding the excess furniture in the property and the reason why he was unable to use the main bathroom to be implausible.
14. The tribunal did not consider it was reasonable however for the applicants to redecorate the whole property. The invoice lodged (which did not have the property address noted on it) was for 'painting and decorating 10 days work' at a cost of £1200. Mr Nawaz gave evidence that when he inspected the property recently it had been redecorated throughout and that this was work which would be expected to take around 10 days. Given that £1200 appeared to be for redecorating the property, the tribunal considered that the sum of £600 was a reasonable sum in relation to redecoration of the three bedrooms affected by the black marks likely to be condensation.
15. With regard to the invoice for £210 in respect of "painted three cupboards and fixed kitchen drawer" Mr Nawaz was unable to clarify this invoice other than to draw the tribunal's attention to the drawer in the photographs which had been damaged. The respondent did not dispute the drawer had been damaged. Given an amount had already been charged for painting costs the tribunal considered that it was reasonable to award roughly one quarter of this, namely the sum of £60 to repair the drawer.
16. The respondent did not dispute that he left various items in the property which required to be removed so the tribunal considered it was reasonable to award the sum of £70 claimed.

17. The eviction issue

The respondent's position was that he moved out of the property after the eviction was granted by the tribunal. He gave evidence that he did not tell the

applicants or their agents that he was moving out. He left various items in the property and when he returned around April 2019, he was unable to gain entry as the locks had been changed. There was a notice on the door from the letting agent and he contacted them and arranged to collect a key. He agreed to return the key when he was finished but it slipped his mind as he had to attend a funeral in Pakistan.

18. The applicants' position as outlined by Mr Nawaz in his evidence was that his company had visited the property on several occasions and come to the conclusion that the property was empty. He stated that it was in accordance with their usual procedure to change the locks and leave a notice on the property inviting the tenant to contact them for a key within a period of time. He also gave evidence that the respondent failed to return the key and a formal eviction by sheriff officer was carried out.
 19. The tribunal granted an order for the rent arrears of £3955 less the deposit of £1000 retained by the applicants. The respondent disputed the arrears and at one point in his evidence seemed to be suggesting that he was withholding rent because of the condensation problem. This matter had not been raised by him at the case management discussion and it was clear that he had not told the applicants or their letting agents that he proposed to retain rent. It appeared to the tribunal that the respondent asked for the keys on the basis that he considered that he still occupied the property. He also failed to return the keys. The tribunal considered that it was reasonable for the respondent to be liable in rent until the eviction order was granted. The tribunal accordingly granted an order for the head of claim relating to rent arrears of £2955.
 20. The tribunal did not consider the claim for £85 to change the locks was reasonable in all of the circumstances. The eviction was granted by the tribunal on 26 February 2019. By the applicants' witnesses evidence the respondent had left belongings in the property.
- 21. Other heads of claim**

With regard to the applicants claim for cleaning the property, the respondent's evidence was that the property was dirty when he took entry in 2017 and he left the property in the same condition. He also gave evidence that he brought this to the attention of the letting agents within 7 days of taking entry and no action was taken. The evidence of Mr Nawaz was that the property was dirty throughout and he made reference to the photographs in the checkout report. The tribunal considered the evidence including the photographs. The photographs tended to show that the property was dirty on the 3 May 2019, the day after the eviction took place. In the absence of any other evidence from the respondent that the property was dirty when he took entry the tribunal decided on balance that the property had been left in a dirty condition and £320 was a reasonable sum to claim to clean the property.

22. The tribunal was not satisfied that it had been established by the applicants on the balance of probability that the respondent had damaged lights within the property. The tribunal refused this head of claim. It was not clear from the oral evidence of Mr Nawaz which lights had been damaged. The photographs lodged suggested the hall lights were broken but the invoice lodged suggested it was the lounge lights. In any event from the emails lodged by the respondent it appeared that he had brought the issue with the lounge lights to the letting agent's attention.
23. With regard to the heads of claim relating to the solicitor's fees for the eviction proceedings and these proceedings, Miss Donnelly drew the tribunal's attention to clause 7.19.2 of the lease which states:

To pay, unless a court orders otherwise, the Landlord's reasonable legal costs and expenses (including VAT) property incurred in enforcing this Agreement or remedying a notable or material breach of, or significant failure to comply with the obligations under this agreement.

24. It was Miss Donnelly's submission that this clause in the lease means that the applicants can recover from the respondent the legal costs involved in pursuing the rule 66 eviction proceeding and the legal costs in raising this rule 70 application. The tribunal decided that it was reasonable to recover the sheriff officers' fees for the eviction given the respondent's actions in leaving the property after the eviction was granted and returning, obtaining a key and failing to return it. Given the eviction was not fault based, the tribunal did not consider it was appropriate to make an award for those legal costs save the £48 incurred in instructing the sheriff officers.
25. Regarding the rule 70 proceedings, Miss Donnelly stated that she was not aware of the applicants taking any steps to recover their losses before making the application. The tribunal did not consider that it was reasonable therefore to make an award in respect of this head of claim. The tribunal did however consider it was reasonable to grant an order for the sheriff officer's fees of £587.98 for the eviction and the solicitor's fee of £40 plus vat for instructing them.

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.

10 February 2020

Lesley A Ward Legal Member

Date