

**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/19/0317**

**Re: Property at 34 Vasart Court, Perth, PH1 5QZ (“the Property”)**

**Parties:**

**Miss Kathleen Thomson, 2A Moredun Terrace, Perth, PH2 0DA  
 (“the Applicant”)**

**Mr Jordan Mackenzie, 3 Young Street, Perth, PH2 0EF;  
Mr Sean Scott, 3 Young Street, Perth, PH2 0EF;  
Ms Karen Scott, 3 Young Street, Perth, PH2 0EF (“the Respondents”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member) and Leslie Forrest (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

This is an application for a payment order dated 25<sup>th</sup> January 2019 and brought in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant sought in her application payment of damages in respect of remedial work she required to undertake to the Property together with costs after the First and Second Respondents, who were her tenants, quit the Property.

The Applicant provided with her application copies of the private residential tenancy agreement, and various photographs, invoices, receipts and correspondence.

The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondents had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 12<sup>th</sup> April 2019, and we were provided with the executions of service.

A Case Management Discussion was held on 1<sup>st</sup> May 2019 at Inveralmond Business Centre, Auld Bond Road, Perth. The Applicant appeared, and was not represented. The First Respondent did not appear, and was not represented. The Second Respondent appeared, and was not represented. The Third Respondent did not appear, but was represented by her husband Mr Ian Scott.

After discussion before the Tribunal, the Second and Third Respondents confirmed that they accepted that all the Respondents were liable in principle for the cost of certain remedial work at the Property. They accepted that work was required to the Property due to the poor condition that the Property was left in by the First and Second Respondents at the termination of the tenancy.

During the Case Management Discussion, the Parties agreed that certain items of expense incurred by the Applicant should be the responsibility of the Respondents (listed in the Case Management Discussion Note, Section 13).

The total value of these expenses amounted to £928.29 (incorrectly shown in the Case Management Discussion notes as £912.99 due to a typographical error).

However, there were several items which remained in dispute between the Parties (listed in the Case Management Discussion notes, section 14), and the Applicant had provided copies of receipts and invoices covering all of the disputed items. These were as follows;

- Cooker Hood filter-£44.00
- Painting and Decorating-£1255.00
- New carpets and underlay-£700
- Light bulbs-£24.96
- Entry system-£111.29
- Replacement bed-£90
- Replacement doors-£316.68 plus (un-itemised) cost of delivery and fitting

The Applicant had provided these figures in a list which had been crossed over to the Respondents.

The Tribunal set a Hearing to make a decision on the disputed items.

## **The Hearing**

A Hearing was held on 17<sup>th</sup> June 2019 at Inveralmond Business Centre, Auld Bond Road, Perth. The Applicant appeared, and was not represented. The First Respondent appeared, and was represented by the Third Respondent's husband, Mr Ian Scott. The Second Respondent appeared, and was also represented by Mr Ian Scott. The Third Respondent appeared, and was also represented by Mr Ian Scott.

The Tribunal asked whether it remained the position of the Parties that they respectively stood by their position to dispute these items. They agreed that they did.

The Applicant sought to lodge certain new photographs and a short outline of her position on the disputed items. The Tribunal granted a short adjournment to allow the Respondents (and the Tribunal) time to consider this new material.

Upon re-commencing the Hearing, the Respondents confirmed that they had no objection to the new material being lodged, and it appeared to the Tribunal that the additional photographs in particular were of assistance.

Evidence was the led from the Parties relating to each of the disputed items as follows:

- The Applicant stated that she had never replaced the cooker hood filter before this (she has owned the Property since 2008). She stated that smoking had rendered the filter useless. The Respondents denied that smoking had occurred in the kitchen;
- The Applicant stated that she had to redecorate the entire property due to marks on the walls, discoloration due to smoking, and pin holes on several walls. Her supplier's invoice for the above noted amount had been shared with the Respondents after the work had been done. The Respondents pointed to an e-mail saying they had been happy to arrange the work themselves at lesser cost, and also to the e-mail from the former letting agent for the Property to the Applicant of 18<sup>th</sup> October 2018 quoting £590.00 for redecoration and indicating that the work could be commenced at the beginning of the following week. The Applicant, when questioned, stated that the property had last been redecorated approximately 18 months prior to the commencement of the tenancy between the Parties;
- The Applicant had provided an estimate of £700.00 for new carpets and underlay, stating that the carpets had been last replaced 3 to 4 years earlier, and that her expectation was that the carpets should last for 5 years. The position of the Respondents was that whilst they accepted that some damage had been caused to the carpets, they were partly threadbare when they commenced the tenancy;
- During the Hearing, the Respondents accepted that they should be liable for the cost of the lightbulbs;
- With regard to the door entry system, the Respondents accepted that the handset had been dropped and that a wire had come loose, however they added that the system had not been working properly when they moved in and the damage was

caused when they had tried to make repairs. The Applicant could not show evidence that it was working properly when the First and Second Respondents moved in;

- The bed in dispute had been bought in 2008 from IKEA at a cost of around £80 or thereabouts. It was noted that the cost of replacing broken bed slats in the frame of the bed were among the items that the Parties had reached agreement on at the Case Management Discussion;
- The Applicant had provided photographic evidence of one damaged internal door but was seeking payment for the replacement of two (plus fitting). The Applicant had only produced evidence in relation to one door. The Respondents accepted that they had damaged one door, but not two.

The Tribunal then adjourned the hearing for a short period to allow the Parties to have a discussion with a view to reaching an agreeable split of the costs on the two largest disputed items. Following that discussion, they were unable to do so, and accordingly the Tribunal then rose to consider the evidence presented.

### **Statement of Reasons**

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

#### **“First-tier Tribunal's jurisdiction**

- (1) In relation to civil proceedings arising from a private residential tenancy—
- (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
  - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than—
- (a) the prosecution of a criminal offence,
  - (b) any proceedings related to such a prosecution.”

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The Tribunal made the following findings on the disputed items:

- The cooker hood filter was well beyond its expected lifespan and so no award should be made in this respect;
- Redecoration of the property was required, and the Applicant was entitled to have this work done as a result of the breach by the First and Second Respondents of clause 25 of the lease agreement. The cost of this work, as quoted by the letting agent to the Applicant in its e-mail to her of 18<sup>th</sup> October 2018, had that contractor been agreed to by the Respondent instead of refusing and instructing her own contractor at a far greater cost, would have been only £590.00. The Tribunal accepted that this amount was a reasonable figure for the cost of those works in these circumstances;

- The carpets had already been used for most of their expected lifespan. During the discussion, the Respondents had suggested that they would agree to pay the sum of £250.00 towards the carpets. The tribunal found this to be a reasonable amount in these circumstances;
- The cost of replacement light bulbs, as earlier noted, were agreed by the Parties at £24.96;
- With regard to the door entry system, whilst acknowledging that the system had been damaged by the First and Second Respondents as they candidly accepted, the Tribunal took account of the lack of evidence about its condition at the start of the Tenancy and awarded £55.65 in respect of that item;
- Given that the bed was over 10 years old and that the cost of replacement bed slats was already agreed, the Tribunal did not consider it reasonable to make any further award in that respect;
- The Tribunal found with respect to the one damaged door for which evidence was produced, and which the Respondents did not dispute, that the cost of replacement of it should be paid for by the Respondents at the sum of £158.34, and added to that the sum of £150.00 in respect of delivery and installation costs. With regard to the second door which was allegedly damaged, the Applicant produced no evidence to support that allegation, which was denied by the Respondents, and accordingly the Tribunal will not make an award in that respect.

The Applicant had also sought recompense for loss of earnings and loss of rent, however the Tribunal, noting the work that had been done and the time taken to arrange for and engage contractors, did not consider that the Applicant had a case for reimbursement of the amount sought on the basis that she had not shown any cost additional to that which any landlord would ordinarily incur in relation to managing their Property.

In terms of the lease agreement, the First and Second Respondents are jointly and severally liable as Tenant, and the Third Respondent is liable jointly and severally with them as guarantor.

The Tribunal accordingly decided that the Applicant is entitled to recover the following expenditure from the Respondents in respect of their breach of clause 25 of the lease agreement, which obliges them 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 willfully or negligently by the Tenant, anyone living with the Tenant or an invited visitor to the Let Property:

- the figure previously agreed by the Parties at the Case Management Discussion of £928.29 and accepted at the Hearing by them;
- the sum of £1,228.95 in respect of the disputed items on the basis of the Tribunal's findings outlined and calculated above;
- these sums to be under deduction of the deposit of £695 already repaid to the Applicant.

Accordingly, the Tribunal shall make an order for payment of the total sum of £1,462.24 as so calculated.

After reaching its decision, the Respondents indicated that they would require time to pay the amount awarded. The Tribunal explained to the Parties the ability of the Respondents to make an application for a time to pay direction.

However, the Parties then indicated to the Tribunal that they wished to discuss directly instalment payments, and the Tribunal was content to adjourn the hearing for a short period to allow the Parties to have a discussion with a view to reaching agreement upon the terms of a time to pay direction.

Following upon that discussion, the Tribunal again resumed the Hearing, and the Parties indicated that they were agreed that the Tribunal should make a time to pay direction in its order for payment.

The Parties were agreed that a first payment should be made by the Respondents to the Applicant on 1<sup>st</sup> July 2019 of £142.24, and thereafter monthly payments should be made on the first day of each month of £120.00 for the following eleven months.

## **Decision**

In these circumstances, the Tribunal will make an order for payment by the First, Second and Third Respondents jointly and severally to the Applicant of the sum of £1,462.24, which sum shall be paid in instalments by a first payment on 1<sup>st</sup> July 2019 of £142.24 and thereafter by monthly payments on the first day of each month of £120.00 for the following eleven months.

## **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.**

Mr Neil Kinnear

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**Legal Member/Chair**

17/06/19

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**Date**