



**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/19/0655

Re: Property at 2 Broomhouse Path, Edinburgh, EH11 3UL (“the Property”)

Parties:

**Mrs Magdalena Szypulska - Zabluda, 116 Fernieside Crescent, Edinburgh, EH17
7DH (“the Applicant”)**

**Mr Jacek Krzychowiec, Ms Joanna Krzychowiec, 16/6 Pennywell Road,
Edinburgh, EH4 4HB; 16/6 Pennywell Road, Edinburgh, EH4 4HB (“the
Respondents”)**

Tribunal Members:

Yvonne McKenna (Legal Member) and John Blackwood (Ordinary Member)

Decision

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

Background

1. An application was received under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) for an order for payment in relation to a monetary claim for breaches of a the terms of a tenancy agreement by the Respondents. The claim was in relation to rent arrears, redecoration of the Property, replacement of keys and locks, replacement of furniture missing or beyond repair at the end of the tenancy, costs for delay in re-letting the property and costs of having items belonging to the Respondents removed from the Property.
2. The application included the following documents
 - Tenancy agreement dated 20th November 2014 between the Applicant and Mr. Jacek Krychowicz and Mr Tomasz Krychowicz

- Tenancy agreement between the Applicant and the Respondents dated 1st October 2015
- Messages exchanged on social media between the parties and the translations thereof from Polish to English
- Photographs showing the Property before and after the tenancy agreement started and ended
- Photographs taken during an inspection in November 2017
- Invoice for supplying and fitting new locks dated 5th January 2018
- Quotations for redecoration work
- Letter to the Respondents from the Applicant in relation to the tenant deposit from the Applicant dated 14th December 2017
- Notice to Quit dated 4th December 2017
- Receipt for mattress dated 29th January 2018
- Photograph showing the Respondents with a dog
- An Inventory list in English and in Polish
- Check-out Report dated 5th January 2018
- Notice to Leave dated 4th December 2017
- Letter from Applicant to Respondents re alleged breach of the tenancy dated 4th December 2017
- Letter from Applicant to Respondents dated 4th December 2017 confirming receipt of £600 dated 4th December 2017
- Safe Deposits Scotland report of independent adjudication
- Letter from Applicant to the Respondents dated 22nd October 2018 setting out claim and proof of postage
- Letter to Applicant from Edinburgh Sheriff Court declining jurisdiction dated 12th December 2018

3. A Case Management Discussion (CMD) took place on 11th June 2019. Reference is made to the terms of the case management discussion note issued. The Respondent had lodged written representations to the Tribunal in advance of the CMD dated 6th June 2019

4. Following the CMD both the Applicant and the Respondents lodged further representations and productions. On 14th June 2019 the Applicant lodged further submissions. Further documents were also lodged at the same time namely

- E-mail from Applicant to Carola Donald -Respondents Housing Adviser
- Invoice dated 19th January 2018 for removing damaged chest unit from the Property
- Descriptions of their photographs and what they represent

On 25th June 2019 the Respondents lodged written representations and lodged documents namely

- Photographs of the property at the start of the tenancy, during the tenancy and at the end of the tenancy

- E-mail dated 18th December 2017 from the Respondents Housing Adviser to the Applicant
- Letter from Respondents adviser to Police Scotland
- Confirmation of receipt of deposit by Safe Deposits Scotland dated 11th December 2017
- Decree of the Tribunal regarding an order for payment dated 20th February 2019 relating to an application under Rule 103 of the 2017 Rules.

Hearing

5. Both parties attended the hearing. Neither party had a Representative. Both parties were each assisted by a Polish interpreter.

6. By way of preliminary matters the Tribunal indicated that both parties had lodged further submissions and documents following the CMD and that unless either party had any opposition the Tribunal intended to accept these in terms of Rules 13, 14 and 16A of the 2017 Rules. Neither party opposed this position.

7. The Tribunal proceeded to detail what matters had been agreed at the CMD. The Applicant had not received a copy of the CMD discussion note. A short adjournment took place and both parties were provided with a copy. After the tribunal resumed parties agreed that the tenancy commenced on 20th November 2014. The tenancy terminated on 4th January 2018. The balance of rent of £100 in respect of December 2017 was settled from a deposit paid by the Respondent. Rent of £90 was due by the Respondent in respect of the period 1st to 4th January 2018.

8 The hearing then commenced to hear oral evidence. The Applicant and her witness namely her husband Maciej Zablude gave evidence. The Respondents and their three witnesses namely their son Tomasz Krzychowiec their daughter Magdalena Krzychowiec and Katarzyna Podlaska all gave evidence.

9. The Applicant directed the Tribunal to the various photographs that she had lodged which, she said, showed the damage occasioned to furniture and moveable items in the property and missing items from within. She also said that the photographs demonstrated the change of décor carried out by the Respondents which she said was in very dark and gaudy colours. She referred to unfinished and defective paint work. She said that she had not agreed to the Respondents redecorating the Property.

10. Her position was that the Respondents had also left the Property in a bad state of repair when they left. She gave evidence that the entire flat had been redecorated before the first lease of the Property to Mr. Jacek Krzychowiec and Mr Tomasz Krzychowiec in November 2014. She was adamant that a dog owned by the Respondents had caused some of the damage and that the tenancy specifically stated that no pets were permitted. She had provided three quotations regarding the cost of decorating the Property. She explained that she could not provide an invoice

as she had been unable to afford to have the redecorating work carried out thus far. She said that she is currently saving up to pay for this. A decision from the Safe Deposit Scotland Adjudicator had already determined that from the £600 deposited with them that this sum should be returned to the Applicant. (The sum of £100 for rent still due for December 2017 had already been paid to the Applicant by agreement of the Respondents). The sum of £600 was awarded in compensation for the redecoration of the Property. The Adjudicator stated in the determination lodged by the Applicant as a production; -

“The landlord considers that the tenants painted without her permission. I have not seen any evidence confirming that the landlord agreed that the colour scheme throughout the property could be changed although the tenants say she was happy about the redecoration.

It does not matter whether or not the tenants improved the condition of the décor. The landlord is entitled to expect the property to be returned to her decorated in the same (or in a similar) colour scheme as at the start of the tenancy. As it was not, she is entitled to be compensated.”

11. The Applicant said that she had provided an Inventory of the Property to Mr. Jacek Krzychowiec and Mr. Tomasz Krzychowiec at the beginning of the first tenancy. This was provided in Polish. She said that she asked for this Inventory to be returned to her signed by them. She said that the two male tenants told her that they would check everything over first and then return the Inventory signed and that she agreed to that as she trusted them. When she had carried out her inspection at the end of the second tenancy there were various items of furniture missing which she had noted. She agreed that she had not inspected the property in between the two tenancies. No new Inventory had been provided to the Respondents when the tenancy agreement was signed on 20th November 2014.

12. She maintained that she had not been able to rent out the property due to the condition left by the Respondents and sought an additional one month's rent. The one month's rent represented the delay she had in re-letting the Property. She said that the delay had been caused by organising meetings with various companies for preparing quotations; having replacement locks installed and organising purchase and delivery of a new mattress. She also needed to air the Property to get rid of the smell of the pet.

13. She said that there had been 4 sets of keys provided to the Respondents and only one set was returned. Thus, she required from a security point of view to change the locks to the Property. She sought an amount to represent the invoice she had paid for this. The Applicant's witness Mr. Zablude confirmed this in his evidence.

14. The lease between the Applicant and the Respondents stipulates; -

“clause 6

At the end of the tenancy the Tenant shall give the Owner vacant possession and shall return all the keys of the property and remove all furniture owned by the Tenant, personal effects and rubbish and leave the property and the Owner's fixtures and fittings in the same condition and state of the tenancy, fair wear and tear excepted”

15. It was common ground between the parties that the Respondents had left a chest of drawers that belonged to them in the Property at the conclusion of the tenancy.

16. The Applicant had an invoice which stated that she had been billed for the sum of £102 which was the cost of this item being removed from the Property. Her husband rendered this invoice through his company. The invoice for uplifting and disposing of the item amounted to £102.

12. The tribunal were asked by the Applicant to also make an order for payment of one months rent as a penalty for leaving this chest of drawers in terms of Clause 15 of the tenancy agreement. Clause 15 provides; -

“.....If you do not remove all personal belongings (except for small items which we can easily and cheaply remove)then you will have to pay to us damages at a rate equal to the rent then payable until you remove them.”

13. The Respondents considered that the sums sued for were ludicrous and exaggerated. They argued that when the first tenancy was entered into by Jacek and Tomasz Kryzchowiec that the property was in a bad state of repair. It was cold and dirty and looked as if it had not been refurbished for several years. The furniture was damaged and wobbly. They maintained that they redecorated the Property in 2015 and in 2017 and that was with the consent of the Applicant who visited the Property from time to time. They denied that they had ever been provided with an Inventory at the outset of their Lease. Their son Tomasz Krzychowiec also gave evidence to that effect. They referred to the photographs that they had lodged to demonstrate that they left the Property in a clean and tidy condition at the conclusion of the tenancy. They did not accept that any delay in re-renting the Property was due to them. They referred to the fact that the locks were replaced the next day after they moved out so should not be the cause of delay in reletting the Property. Their daughter gave evidence to the Tribunal that she was in the Property for two weeks during Christmas 2014 and then she lived there from February 2015-April 2016. She maintained that the Property was in a bad state of repair during this period- the walls were dirty, there was a bad smell throughout , there were stains on a bedroom ceiling, missing woodwork and mould in cabinets . She said that her health had been affected by living there. She developed asthma and required an inhaler. Katarina Podlaska gave evidence that she had helped the Respondents when they moved out and that the Property was ready to be rented out when they left. She said that when the family first moved in that the Property was in a bad state

14. The Respondents agreed that they had retained one set of keys for the property.

Findings in Fact

15. That a lease agreement was entered between the parties.
16. That the tenancy commenced on 20th November 2014 and the tenancy ended on 4th January 2018.
17. Rent was due at a rate of £700 per calendar month
18. That there were rent arrears outstanding at the end of the tenancy totalling £90
19. The Respondents had paid a deposit for the Property of £700. An adjudicator for Safe Deposit Scotland, which held the deposit at the time of termination of the lease, awarded the full deposit of £700 to the Applicant.
20. There was no inspection of the Property by the Applicant prior to the lease agreement being signed.
21. There was no signed Inventory of the Property representing the condition of the Property at the beginning of the Lease or the contents of the Property at this date.
22. The Applicant paid the sum of £102 to have a chest of drawers left by the Respondents removed from the Property.
23. The Applicant paid the sum of £130 to have new locks installed at the Property and for replacement keys.

Reasons for Decision

24. The sum of £90 rent due was accepted by both parties.
25. The sum of £130 to represent the costs of installing new locks and replacing keys was a necessary sum due to the Applicant by the Respondents. They accepted that they had retained a set of keys for the Property without just cause. It was reasonable for the Applicant to ensure the security of the Property to replace the same.
26. The sum of £102 was paid by the Applicant to remove a heavy chest of drawers left in the Property by the Respondents. In terms of the lease agreement she is entitled to be recompensed for her costs in doing so.
27. The Tribunal were asked by the Applicant to make an order for payment of one month's rent as a penalty for leaving this item in terms of Clause 6. The Tribunal considered that this was not reasonable. The item had according to the Respondents been left at the Property to replace another chest of drawers. They said that the previous chest of drawers was in the attic although this was disputed by the

Applicant. The item was removed by the Applicant's husband on 19th January 2018. We did not consider in the circumstances that it was reasonable for the Respondents to have to pay one month's rent as a penalty, therefore.

28. The Applicant maintained that at the outset of the lease that an Inventory of the moveable items had been provided to the Respondents. It became very clear and was accepted by the Applicant and her husband that no inspection had taken place prior to the Respondents signing the tenancy agreement. No evidence of any agreed Inventory was produced. There was no confirmation within the tenancy agreement regarding when the Inventory was returned, where it was signed and that it would form part of the tenancy agreement. The Tribunal therefore cannot make an award for any missing or damaged items when there is no agreement as to what was actually in the Property at the outset. Accordingly, we decline to make an award for any missing or damaged furniture. In addition, as no inspection of the Property took place prior to the Respondents signing the tenancy agreement we cannot make an award for costs of redecoration. The Applicant could not vouch the position regarding the state of décor of the Property at the time the tenancy agreement was signed by the Respondents. It is also noted by the Tribunal that the Applicant has not suffered any loss as she has not had this work carried out.

29. The Tribunal in the circumstances also cannot make an award regarding the loss of one months rent regarding the re-renting of the property. To do so would be unreasonable. The Tribunal do not accept that the Property was left in a bad state of repair at the termination of the tenancy such as would justify this award. We preferred the evidence of the Respondents regarding this issue.

30. The decision of the Tribunal is to make an order for payment in favour of the Applicant for the sum of £322. This sum is comprised of; £90 in respect of the agreed outstanding rent due for the period 1st to 4th January 2018; £130 for the costs of replacing keys and installing new locks at the Property; £102 for the cost of removing the chest of drawers left by the Respondents at the Property.

Decision

The Tribunal grants an order in favour of the Applicant for THREE HUNDRED AND TWENTY-TWO POUNDS (£322) STERLING against the Respondents.

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.

Yvonne McKenna


**Yvonne Mckenna
Legal Member/Chair**

**29th August 2019
Date**