

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/18/3336

**Re: Property at 13 Hoggan Way, Loanhead, Midlothian, EH20 9DG (“the
Property”)**

Parties:

**Mr Alan Kennedy, Mrs Catherine Kennedy, C/O DJ Alexander Lettings Ltd, 1
Wemyss Place, Edinburgh, EH3 6DH (“the Applicants”)**

**Mr Steven Mothersole, Mrs Laura Mothersole, 9 Mayfield Crescent, Loanhead,
EH20 9RJ (“the Respondents”)**

Tribunal Members:

Joel Conn (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondents)

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

Background

1. This is an application by the Applicants for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears and damages. The tenancy in question was a Short Assured Tenancy of the Property by the Applicants to the Respondents dated 11 and 22 April 2017 though the Respondents had previously let the Property under a lease dated 20 June 2014. The 2017 lease increased the monthly rent but the material terms were otherwise identical.
2. The application was dated 10 December 2018 and lodged with the Tribunal shortly afterwards. The application was accompanied with an

invoice addressed to the Respondents dated 6 July 2018 seeking payment of the following:

- a) Rent from 20 March to 19 April 2018 of £1,385
- b) Rent from 20 April to 19 May 2018 of £1,430
- c) Rent from 20 May to 1 June 2018 of £564.16
- d) Cleaning costs of £203
- e) Lock change costs of £230.88
- f) "Repairs & item removal" costs of £1,380
- g) Redecoration costs (discounted to 20%) of £1,728
- h) A sum for "Missing items" of £734.80

The application further referred to tracing costs of £210 and was accompanied by an invoice from an investigations company for £175 plus VAT (that is £210). The application sought a total order against the Respondents of £7,565.84.

The Hearing

3. On 1 April 2019, at a Hearing of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at George House, Edinburgh, we were addressed by the Applicants' agents, Gill Cartwright, Accounts Analyst, and David Gibb, Head of Accounts and Property Support, both of DJ Alexander.
4. There was no appearance by the Respondents. The Applicants' agents confirmed that no contact had been received from the Respondents since the Second Respondent's appearance at the case management discussion ("CMD") of 30 January 2019 at which this Hearing had been set. This was despite the Applicants' agents emailing, and thereafter sending by Recorded Delivery post, a further breakdown of the sums sought, all as agreed would be done at the CMD with the Second Respondent. The Tribunal Clerk confirmed no contact had been received from the Respondents to the Tribunal regarding the Hearing.
5. Ms Cartwright stated that she was satisfied that the Second Respondent had confirmed to the CMD that she represented the interests of both Respondents and that both now resided at their new address of 9 Mayfield Crescent, Loanhead, EH20 9RJ. In the circumstances, we were satisfied to conduct the Hearing in the absence of the Respondents.
6. The Applicants' agent confirmed that the application was still insisted upon and they sought an order in the amount of £7,565.84, all as set out in the application. They explained that the sum sought was made up of the amounts set out above in paragraph 2 but with the deduction of the £300 deposit paid by the Respondents which the Applicants had now uplifted.
7. The Applicants' agents confirmed that they did not seek interest nor expenses (beyond the £210 tracing fee including in the sum sought).

Findings in Fact

8. On 20 June 2014, the Applicants let the Property to the Respondents by lease with a start date of 20 June 2014 until 19 June 2015 and continuing thereafter on a monthly basis (“the Old Tenancy”).
9. On 11 and 22 April 2017, the Applicants let the Property to the Respondents by lease with a start date of 20 June 2017 until 19 June 2018 (“the Tenancy”).
10. The terms of the Tenancy were materially identical to the Old Tenancy apart from rent. Under the Tenancy the Respondent was to make payment of £1,430 per month in rent in advance to the Applicant on the 20th day of each month.
11. Clause 5.1 of the Tenancy agreement states: “The tenant has examined the property and accepts it to be in a good, clean, tidy and tenantable order and repair. The tenant undertakes to maintain the property in like condition throughout the tenancy. The Tenant will leave the property in a clean and tidy condition at the termination date. The tenant agrees to pay for any cleaning required at the termination date in the event that the tenant has breached the terms of this Clause. The tenant will accept the landlord or landlord’s agent assessment of whether the property requires cleaning at the termination date.”
12. Clause 5.5 of the Tenancy agreement states: “The tenant agrees that the inventory hereto annexed as Schedule 1 and signed as relative hereto is a full and accurate list of the whole fixtures, fittings and contents in the property at the date of entry.” Clause 5.6 states: “The Inventory will be checked at the termination date. The tenant agrees to replace or repair (or pay the cost thereof at the option of the landlord or landlord’s agent) any of the contents which are destroyed, damaged, broken or missing/lost during the tenancy, fair wear and tear excepted.”
13. The Tenancy agreement had no Schedule 1 Inventory.
14. Clause 8.10 of the Tenancy agreement states that the obligations upon the Respondents include: “The tenant shall not hang up any pictures in the property except on existing hooks and will not affix any posters, notices or stickers to any part of the property.”
15. Clause 8.21 of the Tenancy agreement states that the obligations upon the Respondents include: “To return all keys to the landlord or the landlord’s agents at the end of the tenancy.”
16. Clause 8.22 of the Tenancy agreement states that the obligations upon the Respondents include: “To remove all personal possession and belongings at the termination date. The Landlord reserves the right to dispose of any

of the Tenant's possession and belonging left in the property at the end of the tenancy."

17. Clause 16.5 of the Tenancy agreement details that:
 - "Before moving out of the Property at the end date the Tenant hereby undertakes to:
 - 16.5.1 Leave the Property in a clean and tidy condition;
 - 16.5.2 Remove all personal belongings;
 - 16.5.3 Hand in the Property keys to the Landlord or the Landlord's Agents;
 - 16.5.4 Remove any fixtures and fittings installed without the Landlord's prior written permission and put right any damage caused..."
18. The Tenancy agreement contains no express provision for recovery of debt recovery costs.
19. The Respondents left the Property on or about 1 June 2018.
20. As of 1 June 2018, there was unpaid rent of £3,379.16 due by the Respondents to the Applicants in terms of the Tenancy in respect of:
 - a) a missed rental payments due for 20 March to 19 April 2018 of £1,430, less an overpayment on the rent account of £45, leaving a balance due of £1,385;
 - b) a missed rental payments due for 20 April to 19 May 2018 of £1,430; and
 - c) Pro-rated rent at £1,430 per month for the period from 20 May to 1 June 2018 of £564.16.
21. The Applicants have been successful in uplifting the Respondents' deposit of £300 from the tenancy deposit scheme provider and have applied this against the rent arrears balance, leaving a sum of rent due of £3,079.16.
22. The Respondents left the Property with significant personal items remaining throughout the rooms, garden and garage clauses 8.22 and 16.5.2 of the Tenancy agreement.
23. The Respondents left the Property with material damage to the fittings and surfaces, including holes within walls, a damaged bathroom sink, and damaged door locks, and further with evidence of stickers, decoration, and other fixings adhered to various walls in breach of clauses 5.1, 8.10, and 16.5.4 of the Tenancy agreement.
24. The Respondents left incomplete sets of keys for the door locks at the Property and its garage in breach of clauses 8.21 and 16.5.4 of the Tenancy agreement.
25. The Respondents left the Property with a standard of cleaning of the interior of the Property, the interior of the garage, the Property's windows,

and the interior of kitchen units and cupboards all significantly below the contractual standard in clauses 5.1 and 16.5.1 of the Tenancy agreement.

26. After the Respondents left the Property, the condition of the Property was such that Applicants incurred sums to remediate the Respondents' breaches of the Tenancy agreement, being:
 - a) £192.40 plus VAT (£230.88) on 4 June 2018 to Red Circle Locksmiths for changing locks and supplying new keys to the four door locks of the Property and its garage;
 - b) £203 on 3 July 2018 to Bluestone Cleaners for cleaning of the Property; and
 - c) £1,150 plus VAT (£1,380) on 3 July 2018 to Barnton Property Services for removal of the Respondents' remaining personal belongings and repair of damaged surfaces and fittings.
27. That the sums expended by the Applicants detailed in paragraph 26 represent reasonable sums incurred to remediate the breaches of the Tenancy agreement detailed in paragraphs 22 to 25 and the losses incurred by the Applicants in respect of same.
28. That subsequent to the Respondents vacating the Property, the Applicants sought to clear the Property of moveable contents, fully redecorate it, and market it for sale. The Property was not relet by the Applicants.
29. On or about 10 December 2018, the Applicants raised proceedings for an order for outstanding rent due and sums in damages of £7,565.84.
30. Subsequent to a case management discussion, the Tribunal served the intimation of the Hearing date upon the Respondents on or about 15 March 2019.
31. The Respondents provided no evidence of payment of any part of the said unpaid rent due or of any payment against the other sums due under the Tenancy agreement.

Reasons for Decision

32. The application was in terms of rule 70, being an order for civil proceedings in relation to assured tenancies.
33. The Applicants sought sums in relation to rent arrears and, in regard to costs after the Applicants had vacated, costs for replacement keys, for cleaning of the Property, repair of damage to the Property, removal of personal belongings, the value of missing items, and a contribution to redecoration. The Applicants further sought payment of £210 (being £175 plus VAT) being the costs of a tracing report on the Respondents. Against these sums, but principally against the rent arrears, the Applicants set off the £300 deposit paid by the Respondents and since uplifted from the tenancy deposit scheme provider.

34. In advance of the Hearing, the members identified a lack of vouching and made various requests of the Applicants' agents. Further invoices and explanations were provided by the Applicants but all were materially reliant on evidence of breaches of the Tenancy agreement said to be found in the Applicants' agents' "Check Out" report which ran to 393 pages. At the Hearing, the Applicants' agents provided submissions as to how the Check Out report should be interpreted. It comprised a succession of photographs said to have been taken of each room (and outbuildings and garden areas) of the Property on "check in" when the Respondents first tenanted in 2014 with comparison photographs taken on "check out" after the Respondents vacated on 1 June 2018. Where appropriate, there was narrative as to what the differential between the photographs was intended to illustrate (such as an issue of damage, a want for cleaning, a missing item, or an abandoned personal item of the Respondents). The report was dated 4 June 2018.
35. The Tribunal members did not find the report easy to interpret without significant assistance from the Applicants' agents. The absence of simple documents such as an Inventory on check in and an Inventory on check out created a significant hurdle in considering the application. Further, during their submissions – on being pressed by the Tribunal members – the Applicants' agents made at least three concessions as to items that were said to be missing but were either not evidenced by the Check Out report as being present at the start of the Tenancy, or could be seen to be remaining at "check out" either within the Check Out report or in other photographs provided by the Applicants' agents of the loft space at the Property.
36. The items allegedly missing were, thus, poorly vouched. Although a detailed reading of the Check Out report, and its myriad of photographs, may have left the Tribunal members more satisfied that the allegedly missing items were nowhere else within the Property, the Applicants still provided no vouching for the costs of the missing items (either on acquisition, on replacement, or at second hand cost). The sum sought was admitted to be an estimate, arrived at by the Applicants' agents' Property Manager who was not in attendance to provide evidence. The Tribunal members further noted that the invoice for redecoration works purported to include disposal of moveable items, such as blinds. The list of missing items also included blinds. The Applicants were, on one hand, seeking a sum of damages equivalent to the alleged second hand cost of multiple sets of blinds, while also claiming for the costs of their decorators disposing of blinds. Ms Cartwright conceded that the Applicants sought recovery of the Property from the Respondents for the purposes of selling. The Tribunal members held that the clearance of the Property of all its moveable contents was an intended part of marketing the Property for sale. The Tribunal members questioned whether the Applicants had intended for any of the Property's moveable contents to be preserved and reused elsewhere after the sale of the Property. Ms Cartwright confirmed that she did not know.

37. In general, the Tribunal Members were satisfied that the Check Out report demonstrated that the Property had been left in a poor state with a number of wants of repair, need for cleaning, and fixings attached to the walls. The Applicants sought only 20% of the total redecoration costs as there was an acceptance that some normal wear and tear had occurred. The Tribunal was not satisfied as to the want for decoration arising from the Respondents' occupation (beyond normal wear and tear) and were further satisfied that the decoration works would have been undertaken in full in any case in order for the Applicants to place the Property on the market for sale. Had the Respondents left the Property in good decorative report, the Tribunal members thought it likely that significant redecoration would still have still occurred for the purposes of the sale. This is to be distinguished from the need to repair damaged items.
38. It is further to be distinguished from the need to clear the Property of excess personal belonging left by the Respondent, which would have been required to be removed in any case.
39. In regard to cleaning costs, the Tribunal members questioned whether cleaning the Property in early June, prior to major redecoration works, represented wasted cost. The Tribunal members were, however, satisfied that significant cleaning was required at some point due to the condition the Property had been left in by the Respondents. Further, there was an element of extraordinary cleaning to interiors of kitchen units, cupboards, and the garage, all of which areas that would not routinely be re-decorated or effected pre-sale.
40. Further, the Tribunal members were satisfied that the Applicants were acting reasonably in seeking new locks for the Property's doors and garage given that the Respondents returned incomplete sets of all keys. The Check Out report evidenced the number of keys "before" and "after" by photograph.
41. In the circumstances, the Tribunal members were satisfied that the entire rent arrears sought were properly vouched and due and a sum of £3,379.16 was due, less the £300 deposit, leaving a balance of £3,079.16.
42. In regard to the damages sought:
 - d) The Applicants sought £203 in cleaning costs for the whole Property. The Tribunal members, though accepting that some cleaning would have been rendered abortive by the subsequent decorative works, were satisfied that £203 was a reasonable sum in damages arising from the poor standard of cleaning.
 - e) The Applicants sought £230.88 for replacement locks and keys. The Tribunal members were satisfied that was a reasonable sum in damages arising from the failure to retain all keys.

- f) The Applicants sought £1,380 (being £1,150 plus VAT) for repairs and removal of personal belongings. The Tribunal members, though unable to identify each alleged want of repair or abandoned items due to the nature of the Check Out report, were satisfied that this was a reasonable sum in damages arising from the damage to the Property and failure to remove personal items on vacating.
43. The Tribunal members were not satisfied to award the sum of £210 in regard to tracing costs in the absence of any reference to the recovery of same within the Tenancy agreement and in consideration that these were otherwise costs of litigation before the Tribunal for which no order for expenses was being sought by the Applicants. The Tribunal members further were not satisfied to award any sum for decoration or due to missing items for the reasons stated above.
44. The Tribunal members were satisfied, on the basis of the application and supporting papers, and the submissions provided by the Applicants' agents at the Hearing, that net rent arrears of £3,079.16 were outstanding as at 1 June 2018 and remained outstanding. We were also satisfied that the Applicants had incurred costs for lock changes and new keys of £230.88, for cleaning of £203, and for repairs and removal of items of £1,380 all being a reasonable sum in damages arising from the Respondents' breaches of the Tenancy agreement. We were thus satisfied that the necessary level of evidence for such civil proceedings on that combined sum of £4,893.04 had been provided.
45. We were thus satisfied to award the sum of £4,893.04 against the Respondents jointly and severally.

Decision

46. In all the circumstances, we were satisfied to make the decision to grant an order against the Respondents jointly and severally for payment of the sum of £4,893.04 to the Applicants.

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.

J.Conn

~~Legal Member/Chair~~

Date

2 April 2019