



Written Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) with statement of reasons under Section 71 of the Private Housing (Tenancies) Scotland Act 2016

Chamber Ref: FTS/HPC/CV/22/1509

Re: Property at 40 Upper Wellheads, Limekilns, Fife, KY11 3JQ (“the Property”)

Parties:

Ms Karen Mackenzie, 16a Couston Street, Dunfermline, Fife, KY12 7QW (“the Applicant”)

Mr David Blyth, 26 West Harbour Road, Charlestown, Dunfermline, Fife, KY11 3ET (“the Respondent”)

Tribunal Members:

Karen Kirk (Legal Member) and Angus Lamont (Ordinary Member)

This Hearing concerned an Application for Civil Proceedings. The Applicant sought a Payment Order for return of a tenancy deposit. The Tribunal discussed the procedure and rules of procedure as relevant. The Tribunal discussed the order of proceedings in regards the Hearing and how evidence would be heard.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted a payment order in favour of the Applicant to the amount of £503.36.

1. Attendance and Representation

The Applicant was present and was represented by Grace Walker, Frontine Fife.

The Respondent was present and unrepresented.

2. Preliminary Matters/Procedural Issues.

- a) The Tribunal confirmed that further written evidence and representations had been lodged with the Tribunal by the Respondent last week. The Tribunal administration had distributed the papers on the morning of the Hearing. The Tribunal adjourned for a period of 40 mins to allow parties to consider them and on return all parties confirmed they had had sufficient time to do so, including the Tribunal members.
- b) The Application had previously been adjourned as the hearing of evidence could not proceed without hearing evidence from the Applicant. Much of what was in dispute and to be determined concerned differing accounts of the Applicant and the Respondent. The Tribunal required to hear from both to determine the Application fairly. The Applicant had said she would be unable to take part due to significant ill health in connection with the matters in dispute. She was able to attend this hearing but asked for adjustment and for the Legal Member to put the Respondent's questions to her and the Legal Member to put the Applicant's questions to the Respondent. There was no objection to this adjustment and order of proceeding by any party.

There were no further preliminary matters

3. Evidence Summary

For the Applicant

1. The Applicant said she resided at the property from 1st May 2017 with her son, then 13 years. At the time she was a practice manager for a GP surgery in Edinburgh. She is 52 years of age. She explained that she paid the deposit into the landlords bank account and the tenancy paperwork was printed and she signed it. The tenancy document was renewed every year. The deposit was £625. The Applicant assumed that the Respondent would pay the deposit into a deposit scheme as she had rented before. She did not become aware it had not been secured until she was moving out of the property. At no stage was it secured and she sought return of same through this Application.
2. The Applicant explained that the day after she handed back the keys she contacted the Respondent and asked when to expect the return of the deposit. He told her not to hold her breath as he was toting up the damage she had done. She said she had emailed to ask where the deposit was and if there was a reference number so that she could challenge any request to retain the deposit. She contacted all 3 schemes and it was not in any of them. The Applicant said that it was when she enquired about the deposit and took steps that the Respondent started raising costs. She had previously been able to use

the dispute scheme in another tenancy for return of the deposit but could not do so as the Respondent had not secured her deposit.

3. The Applicant said the Respondent had had no issues regarding the state of the property before she asked for the deposit back. The Applicant said the Respondent had visited and inspected the property on the 27th August 2017, 27th April 2018, 23rd October 2019, 9th April 2021, 9th May 2022 and the 10th May 2022. She said on the 10th May 2022 she was doing the last bit of cleaning and the Respondent was already in the bedrooms ripping carpets and wallpapering. The Applicant said she had a text conversation with the Respondent on Sunday 8th May 202 when he and his wife were returning from holiday. She replied she was still emptying and cleaning and the Respondent agreed she could more time. The conversation was amicable. He agreed to extra time.
4. The Applicant said she accepted responsibility for one item only that the Respondent claimed she was responsible for and that was the fridge shelf. It was cracked and she put clear gorilla tape on it but it slipped her mind to replace it. With the exception of that she sought return of the deposit. The clothes drier she advised was damaged on entry and lying to the side of the garden. She said the pictures of the washing line lodged were taken when the tenant before had been in the property.
5. The Applicant said in March 2019 that she verbally notified the landlord of damage to the hall wallpaper. She said there was anaglypta floor to ceiling paper in the hall and part of it had been torn by her cat. She had attempted to resolve it but she wanted to prevent further damage by the Cat. She employed a professional decorator and replaced the anaglypta paper to half height. The following month after she had said to the Respondent about it he was in the property in April 2019 and at that point the paper had been stripped off. The Applicant advised what she would do and that a professional decorator was arranged. The Respondent did not make comment. He was back in 23rd October 2019 , 24th October 2019 and nothing was said. The Respondent did not say anything about the wallpaper on 9th April 2021, 9th May and 10th May. She did not accept the costs with the exception of the fridge door. She said the clothes airer had been damaged and was at the side of the garden when she moved in but she had recalled it being there when she viewed the property. She said the window keys were not all present at the start of the lease.

For the Respondent

6. The Respondent explained he was 73 years old and retired. He said he saw the Applicant in March and April 2019 and that he saw that she had stripped the wallpaper in the hall, the stairs and the landing. The Respondent said he

considered it was excessive due to a small area being scratched. He told the Applicant that the plan was not acceptable and that the whole area would need to be stripped.

7. The Respondent said the Applicant had explained that the work would be done with professional thick lining paper and then painted white. The Respondent referred to photographs he had lodged where he had measured the lining paper used which he said was the thinnest grade of lining paper. He said it was not acceptable but he could not finish the lease over it and had decided he would revert to the deposit at a later stage. The Respondent said at the end of the lease he painted the hall and painted over the lining paper. He did not change it as that was subject to this application. He told the Tribunal the costs lodged was the cost of replacing it all. He has a tenant in the property just now.
8. The Respondent told the Tribunal that when the Applicant moved in the living room carpet was brand new. At the end of the lease he tried to clean it with a rug doctor and had said it not been cleaned for 5 years. The Respondent said with maintenance the carpet would last 7/8 years. The Respondent had no inventory for any of the costs sought. The Respondent said that there was a fire when the Applicant moved in and she requested it was taken down and she would make good the hole at her own cost. The window locks were all missing. The Respondent said the bath overflow pop up was broken. All of the costs were itemised. The Respondent had replaced a broken clothes line for the garden at a cost of £54.40 and he said that had been present in the property.
9. The Respondent sought to recover extra rental days to 8th May 2022 that he said he calculated to be £161.28. The Respondent said he had agreed to extra time to clear the property but he could not recall if he was on holiday. The Respondent said that there was a sky dish installed without permission as well as smart meters. The Respondent sought to retain the deposit in full.

4.Submissions

The Applicant sought recovery of the deposit with the exception of the fridge door. She said the carpets she believed were not new on entry and that as both her and her son were in the property during lockdown and a period of home-schooling then there was a high footfall. She said it was reasonable wear and tear and normal for a 5 year period. She said she had a large cream rug which covered most of the carpet but not the doorway. She twice a year borrowed a carpet cleaner for the rug and the other carpets were also cleaned. The doors not well hung and grated on the carpet on opening and closing which she said you can see in the respondents photographs.

The Respondent was looking for retention of the property deposit for the remedial work required, for the carpet, the keys, the hall decoration, the clothes dryer and the outstanding rent. The Respondent lodged the following costs in the following written representations.

“Repairing Hall, Stair and Landing Wallpaper

a.

I was in the house for an inspection and the wallpaper in the hall, stairs and upstairs landing the anaglypta paper had been stripped off – approx. 4 feet above the skirting board. I asked why this had happened and she said it was one of her cats had scratched the paper. In Karen’s submission to the Tribunal, she stated – “One of my cats scratched at a corner of the wallpaper causing damage to a small area some time in 2019”

The length of wallpaper in the Hall walls measures 26 feet or 7.3 meters, the length of the wallpaper on the Stair walls is 24 feet or 7.3 meters and the wallpaper on the upstairs landing walls measures 21 feet or 6.4 meters. So, in total 71 feet or 21.64 meters – not insignificant or small. If it was a small area - Why take all the paper off? Also, she never contacted me to discuss the issue and find an agreeable solution to us both. I never saw the actual problem until I had the inspection and saw she had stripped 21.64 meters of paper – I asked what she was thinking of doing as a solution, she told me her solution, which I said was not acceptable – there was no further solutions put forward and she went ahead anyway without permission. The wallpaper she put on is very thin lining paper with a 1” paper dado to disguise the join between the anaglypta and the lining paper however because of the embossing on the anaglypta there is a gap shown at the anaglypta join.

Karen’s states that her solution left the area in a better state. This is difficult to understand as the original wallpaper had been on the walls since 2006 and was in very good condition when Karen moved into the house or Karen would have mentioned in her supporting documents in Form F

The estimate for making good the damage caused is £2,150 Attached is the estimate – labelled Issue 1

b. c.

2. Living Room Carpet

- 1. The living room carpet was badly stained at doors, in the middle of the room and paint marks in one of the corners – we tried to clean the carpet with RugDoctor but the photographs are after the cleaning. Cost to replace was:*
- 2. £194.80 + £90 for Fitting = £284.80*

*c. Documents from TAPI Carpets attached – 3 documents attached labelled Issue 2
d. 4 photo’s attached – labelled Issue 2*

3. Window locking keys were all lost were all lost.

a. Cost to replace £29.81

b. Receipts from Handles and Hinges attached – 4 documents attached labelled Issue 3

4. *Bath Overflow and Pop up – Broken*

a. *Cost to replace + plumber = £75*

b. *Receipt attached – document labelled Issue 4*

5. *External Rotating Clothes Line – original twisted, broken and left beside the bins*

a. *Cost to replace £54.40*

b. *Receipt attached – one document Labelled Issue 5*

c. *Photograph of replacement attached – labelled issue 5*

6. *Fridge Freezer – Bottle shelf cracked and broken*

a. *Cost to replace from eSpares - £46.64*

b. *Receipts attached – 2 documents attached labelled Issue 6 c. 2 Photo's of shelf attached – labelled Issue 6*

7. *Extra Rental Days*

1. *Karen asked to extend her time in the house by an extra 8 days to clear the house and clean – I knew she had a lot of possessions, and it was only her and her son to do the moving – so I was sympathetic. She was still cleaning the kitchen on the 8th day when we came to repossess the house.*

2. *The cost of the extra 8 days is £161.28.*

3. *Rent £625 – 31 days in May = £20.16 per day*

8. *Not Receiving Permission*

1. *Karen had a SKY dish installed on the front wall of the house – she did not request*

permission or let me know this was taking place.

2. *She also had Smart Meters installed – but again did not let me know or get*

permission.

I have just requested installation of smart meters for my Mother's house and there is a question in the form by the energy supplier – “do you require landlord permission” – I guess Karen said no!

Also, she has taken the monitor for the smart meters – can she please return

Total costs = £651.93 + £2,150 “

4. Findings in Fact

1. The parties entered into a lease for the property which commenced on 17th May 2017 and ended on 2nd May 2022. The Applicant paid a deposit of £625 and

this was not secured in an approved deposit scheme. There was no inventory for the property taken and no photographs taken on entry or exit. The Respondent has retained same and continues to do so.

2. The Applicant on entry found some keys to some of the windows missing and a clothes airer that had been present on viewing the property was damaged and on the ground to the side of the garden. She did not use the airer throughout the tenancy.
3. In or around March 2019 the Applicant informed the Respondent she was making good damage caused by her cat to hall wallpaper. The Applicant employed a professional decorator at her own expense.
4. The Respondent did not find the work acceptable and planned to retain the deposit for same. He has not replaced the work carried out however and has obtained an estimate to do so only. He has continued to rent the property out painting over the work instructed and paid for by the Applicant.
5. Inspections and or access took place in the property by the Respondent personally on 27th August 2017, 27th April 2018, 23rd October 2019, 9th April 2021, 9th May 2022 and the 10th May 2022. The Respondent raised no issues or damage or work being required to be done with the Applicant during this access.
6. The carpet within the lounge of the property was badly worn in particular at the entry and exit to the lounge. This was caused by reasonable fair, wear and tear over a 5 year period.
7. The Applicant caused damage to the fridge door of the property to the value of £46.64
8. Parties had got on reasonably well until after the lease ended. Towards the end of the lease parties were in text communication and the Respondent was on holiday. The lease ended on the 2nd May 2022 and the Applicant moved to her current address. She retained the keys to clean the property and do final checks on the basis that the Respondent explained he was on holiday and that there was no rush. She was diligent in cleaning and making good the property after a 5 year period.
9. There was damage caused to the bath overflow and this was at a cost of £75 to remedy.

5. Reasons for Decision

The Applicant was a credible witness giving evidence in a straightforward and clear manner. She frequently checked dates and text messages to ensure the accuracy of her evidence. She did not dispute damage to the fridge and took responsibility for same. She did not challenge the bath overflow. On the other issues in dispute she gave clear and credible evidence on the nature of them and the steps she had taken. She could provide dates for all of the Respondent's visits to the property and had lodged text messages and communication which was fully consistent with her evidence.

In contrast the Respondent could not recall dates for his access to the property nor could he recall if he was on holiday at the end of the lease. He was unable to produce an inventory of the property at commencement or at the end. He provided an extensive and significant cost for redecoration of the hall in excess of £2000 but he had not carried out the work to re let the property, which he had successfully done.

He had painted over the work done. He sought to have the Applicant meet the cost of the full replacement carpet after a period of 5 years in the property rather than a proportion of same. His evidence was not as straightforward and whilst he had lodged a list of costs and photographs they were not evidenced by an inventory and the photographs were not directly relevant to his position. For example the clothes airer was shown in a picture but this was not on entry but at a time another tenant was residing in the property before the Applicant.

Accordingly the Tribunal determined that the Respondent return the amount of the deposit to the Applicant with the exception of the fridge shelf replacement of £46.64 and the bath overflow of £75. The Tribunal granted a payment order in favour of the Applicant to the amount of £503.36.

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.

9th February 2023

Legal Member/Chair

Date