



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 Private Housing Tenancies (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/24/1612**

**Property at 60 Dykehead Road, Airdrie, North Lanarkshire, ML6 6TA (“the Property”)**

**Parties:**

**Mr Usman Ashraf, Narmeen Zahra, 4 Golf View, Dundee, DD4 0FW (“the Applicants”)**

**Planplex Limited, 54 Tannoch Drive, Cumbernauld, Glasgow, G67 2XX (“the Respondent”)**

**Tribunal Member:**

**Josephine Bonnar (Legal Member)**

**Decision in absence of the Applicants**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be refused.**

**Background**

1. The Applicants seek an order for repayment of a tenancy deposit. They lodged a tenancy agreement, email correspondence, an invoice from a plumber and an email from Safe Deposit Scotland which confirmed that the deposit was repaid to the Respondents because the Applicants had declined to use the scheme adjudication process.
2. A copy of the application was served on the Respondents. Both parties were advised that a case management discussion (“CMD”) would take place by telephone conference call on 15 October 2024 at 10am and that they were required to participate. Prior to the CMD, the Respondent lodged a written submissions and a number of documents and photographs.

3. The CMD took place on 15 October 2024. The Respondent was represented by its directors, Mr and Mrs Ochelli. The Applicants did not participate and did not contact the Tribunal prior to the CMD. The Tribunal clerk attempted to contact the Applicants by telephone, without success. The Applicants later contacted the clerk to say that they were unable to attend and that the CMD should proceed in their absence.
4. Mr and Mrs Ochelli told the Tribunal that the Applicants had terminated in the tenancy in March 2024, after the damage had occurred. When the property was inspected, they found a number of unauthorised alterations including a shower head which had been installed next to the WC.
5. The Legal Member noted that the Respondents had provided documentary evidence which supports their defence to the application. This included an email from the letting agent confirming that permission was not granted for the installation of the handheld shower. They also submitted evidence which appeared to establish that the damage to the property was caused by a leak from altered pipes at the boiler and not the bath, which is not above the kitchen. On the other hand, the Applicant had not provided any evidence to support their claim that the damage to the property was not their fault or that they were given permission for alterations.
6. The Legal Member noted that there was a factual dispute between the parties as to the cause of the damage and whether the Applicants carried out unauthorised alterations. However, as the Applicants failed to attend the CMD, it was not possible to obtain further information from them about the application or discuss the production of additional evidence. In the circumstances the Legal Member determined that the CMD should be adjourned.
7. Following the CMD, a note regarding the discussions was issued to the parties together with a direction. This required the Applicants to clarify whether they wished to proceed with the application and to confirm that they would attend a hearing. The Applicants were also notified that if they failed to respond or attend a future hearing or CMD the Tribunal may decide to dismiss the application or make a decision on the application in their absence.
8. In response to the direction, the Applicants notified the Tribunal that the application was to proceed, and that Mr Ashraf wished to participate by video conference. No explanation was provided for their failure to attend the previous CMD. A video conference was scheduled for 3 March 2025 at 10am. The parties were notified. Prior to the CMD both parties lodged further submissions and documents.
9. On Friday 28 February, the Applicants sent an email to the Tribunal stating that they were abroad and that a decision should be made in their absence, or the case should be re-scheduled. The Tribunal issued a response which stated that the Applicants should clarify if they were seeking a postponement and if so, provide evidence that they were unable to attend. They were also notified that the CMD would proceed and that a decision might be made in their absence.

No response was received.

10. The CMD took place by video conference on 3 March 2025. The Respondent was again represented by Mr and Mrs Ochelli. The Applicants did not participate.

### **Case Management Discussion**

11. The Legal Member advised Mr and Mrs Ochelli that the Applicants had not confirmed if they were seeking a postponement, and no further communication had been received. The Legal Member also advised that the CMD would proceed in their absence as the Applicants had twice failed to attend a CMD scheduled by the Tribunal. On the first occasion, no explanation was given. In relation to the present CMD, the Applicants had indicated that they were abroad. However, their email had only been received on 28 February, and they had not provided any details or evidence. Furthermore, they had stated that the CMD should proceed in their absence as they had lodged their evidence.
12. Mr and Mrs Ochelli confirmed that the Applicants vacated the property in March 2024, after the damage had been investigated and the contractor had concluded that the new, unauthorised pipework had caused the leak. They said that they did not know why the Applicants had declined to use the deposit scheme's adjudication process and instead had made an application to the Tribunal. They confirmed that the whole deposit had been used to pay the contractor and plumber to repair the damage caused by the leak and to remove the unauthorised pipework and shower. This had cost £1140. The contractor involved does a lot of work from them. They confirmed that he had provided the statement, invoice, photographs and videos. The deposit had been £925. They also confirmed that the bathroom floor in the property is an ordinary floor. It's not a wet room floor with a drain. They were not contacted about the fitting of the shower and would not have given permission if this had been requested. The property was re-let after the Applicants moved out and there have been no further leaks since the pipework was removed.

### **Findings in Fact**

13. The Respondent is the owner and landlord of the property.
14. The Applicants were the tenants of the property in terms of a private residential tenancy from 2 February 2024 until the end of March 2024.
15. The Applicants paid a tenancy deposit of £925 at the start of the tenancy. This was lodged with Safe Deposits Scotland.
16. At the start of the tenancy the Applicants arranged for the installation of a handheld shower and additional pipework at the property.

17. The Applicants did not seek or obtain the consent of either letting agent or the Respondent to install the shower or pipework.
18. Following the installation of the shower and pipework there was a leak from the pipework which caused significant damage to the property. The leak was caused by the new pipework.
19. The cost of re-instating the property, including the removal of the shower and pipework was £1140.

### **Reasons for Decision**

20. The Legal Member is satisfied that a decision on the application should be made in the Applicants absence in terms of Rule 29 of the Tribunal Procedure Rules 2017. The Applicants have twice failed to attend a CMD, having been notified of the date and time of the CMDs by the Tribunal.
21. The Applicants lodged a number of documents with the application. These included a copy of their tenancy agreement, an invoice from the plumber who installed the shower and some email correspondence. One of the emails is dated 3 March 2024 and had been sent to the letting agent to notify them that there was a leak from the bath which had damaged the kitchen ceiling. They also provided an email from SDS which indicated that the Applicants had refused to use the scheme's dispute resolution service to deal with the dispute regarding the deposit.
22. The Respondents also lodged submissions and documents. They provided photographs of the property before and after the damage had occurred and statements and invoices from a contractor who had carried out refurbishment of the property shortly before the start of the tenancy. The same contractor, along with a plumber, re-instated the property after the leak and resultant damage. Video evidence was also submitted together with emails from the Respondents previous and current letting agents confirming that they had not authorised the installation of the handheld shower and pipework.
23. The Legal Member notes that there are two aspects to the application. Firstly, whether the Applicants had been entitled to install the shower and associated pipework. Secondly, what caused the leak and damage to the kitchen ceiling.

### **Installation of the shower and pipework**

24. The PRT lodged by the Applicants with their application is a standard model tenancy agreement. It includes a clause in relation to the tenant taking reasonable care of the property (clause 16). Clause 17 relates to the repairing standard and stipulates that this does not cover work for which the tenant is responsible due to a failure to use the property in a proper manner. This clause also stipulates that the tenant will be liable for the cost of repairs where these are needed due to the tenant's fault or negligence. Clause 27 stipulates that the tenant agrees not to make any alterations to the property without the "prior

written consent of the landlord”.

25. In the application the Applicants state that they obtained the consent of the letting agent for the installation of the shower. They did not provide any evidence to support this claim. On the other hand, the Respondents provided emails from both letting agents which confirm that permission was not granted. The Applicants failed to attend both CMDs or to provide any further information about who gave them permission and how this was obtained. The Respondents attended both CMDs and told the Legal Member that permission was not sought or obtained, and they did not know about the shower until the leak was reported, and their contractor attended to investigate.
26. Based on the available evidence the Legal Member is satisfied that the shower head and associated pipework were unauthorised alterations and that the Respondents are entitled to retain from the deposit the cost of re-instating the property to its previous condition.

### **The leak and damage to the kitchen ceiling**

27. The Applicants did not lodge any evidence with their application to support their claim that the new pipework was not the source of the leak. In response to submissions and documents lodged by the Respondents, they submitted a letter which purports to be from the plumber who installed the shower. This is not on headed paper and, as neither the author of the letter nor the Applicants attended either CMD, it was not possible to obtain further information about him or the work that he carried out. In any event, the author of the letter states that he attended at the property after the Respondents contractor had already attended and fixed the leak. The Applicant’s plumber said that the leak had not been caused by his work, but by a corroded pipe. However, no evidence was submitted, and it was not disputed that new pipework had been installed.
28. The Respondent’s contractor also submitted a statement. This is supported by photographs and videos of the new pipework, shower and the damage to the ceiling. The Legal Member notes that the shower and pipework were installed at the beginning of February. The leak was reported at the beginning of March when the ceiling in the kitchen collapsed. It was not clear from the evidence when the leak first occurred. On the balance of probabilities and having regard the evidence lodged by both parties and the information provided by the Respondents at both CMDs, the Legal Member is satisfied that the leak was caused by the new pipework and that the Respondents are entitled to retain from the deposit the cost of re-instating the property.
29. As the re-instatement costs exceeded the deposit that was paid, the Legal Member is satisfied that the Applicants are not entitled to a payment order for the return of the deposit

### **Decision**

**30.** The Tribunal determines that the Applicants are not entitled to a payment order in relation to the tenancy deposit.

#### **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.**

**Josephine Bonnar**

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**Josephine Bonnar, Legal Member**

**3 March 2025**