



**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/18/1568

Re: Property at 23 Lime Grove, Dumfries, DG1 4SQ (“the Property”)

Parties:

**Mr David Carson, 58A3 Rue-Brisee, Obourg Mons, 7034 Belgium, Belgium
 (“the Applicant”)**

**Miss Sophie Nicoll, 35 Priestlands Drive, Dumfries, DG2 7LD (“the
 Respondent”)**

Tribunal Members:

Alastair Houston (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
 Tribunal”) determined that an order for payment of £1581.22 be made in favour
 of the Applicant.**

1. Background

- 1.1 This is an application under Rule 70 of The First Tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”). The Applicant sought an order for payment by the Respondent in respect of sums due under an assured tenancy agreement between the parties.
- 1.2 The application was accompanied by a copy of the written tenancy agreement, an inventory and property record of condition (“the pre-tenancy report”), photographs of the property after the tenancy had ended, invoices for repairs carried out at the property and emails. No written representations had been received from the Respondent in advance of the Case Management Discussion.

2. The Case Management Discussion

- 2.1 The Case Management Discussion took place on 14 January 2019. The Applicant was represented by Allan McMillan, Managing Partner of GM Thomson & Co. The Respondent was neither present nor was she represented. There was no explanation for her absence.
- 2.2 The Tribunal noted that the application was accompanied by a Sheriff Officer's certificate of citation. The Respondent had been given notice of the Case Management Discussion in terms of the Rules. Accordingly, the Tribunal deemed it appropriate to proceed in the absence of the Respondent in terms of Rule 29 of the Rules.
- 2.3 Mr McMillan confirmed that the application was insisted upon. He referred to the email accompanying the application of 8 November 2018, which contained the breakdown of the sums sought from the Respondent. He submitted that the Applicant was entitled to recover these sums from the Respondent under the written tenancy agreement, with specific reference to Clauses 16 and 24, which contained the obligations upon the Respondent in terms of the condition of the property.
- 2.4 Mr McMillan addressed the Tribunal on each of the individual items for which payment was sought. Firstly, in respect of the replacement of the kitchen worktops, he referred to the pre-tenancy report, which confirmed the worktops were unmarked at the commencement of the tenancy. He referred to the photographs taken after the tenancy ended, one of which showed burn marks on the worktops. He submitted that full replacement of these was necessary as replacing the damaged section was not possible.
- 2.5 Secondly, in respect of the redecoration of the property, the Tribunal queried with Mr McMillan the notes in the pre-tenancy report that the paintwork in the bedrooms and stairs was scuffed at the commencement of the tenancy. Mr McMillan advised that, at the end of the tenancy, there were much larger marks and significant deterioration beyond that which would be expected through regular wear and tear. This extended through two bedrooms, the hall and landing and the living room. Furthermore, the tenant had repainted the red wall in the living room without permission, to a poor standard. Mr McMillan did concede that the Applicant might have to bear some of the cost of redecoration.
- 2.6 Thirdly, in respect of the cost of repairs to the cooker and storage heater, Mr McMillan advised that they were in working order at the commencement of the tenancy. He further advised that the control mechanisms on both appliances had been damaged during the tenancy necessitating the cost of replacement.
- 2.7 Fourthly, in respect of the cost of the maintenance of the garden, Mr McMillan advised that the gravelled areas had not been weeded. He

referred to the photographs taken at the end of the tenancy. Rubbish required to be removed from the garden. It appeared that the lawn had been dug up in sections by a pet. The lawn had not been maintained.

- 2.8 Fifthly, in respect of the cost of cleaning the carpets, the Tribunal queried with Mr McMillan the note in the pre-tenancy report that the carpets had marks due to the previous presence of furniture. He advised that these would simply be indentations as opposed to stains or damaged. He referred to photographs taken at the end of the tenancy, which showed stains within one of the bedrooms and on the stairs.
- 2.9 Sixthly, in respect of the cost of cleaning the property, Mr McMillan advised that the condition of the property after the tenancy was below par. The sinks had not been washed out and the floors were not clean. He referred to photographs of the sinks, bathroom and shower head.
- 2.10 Finally, in respect of the rent outstanding, Mr McMillan advised that the tenant had moved out on 17 December 2017. Rent had been charged on a pro-rata basis for the month of December 2017. This had been calculated when a claim for the tenancy deposit was submitted to the Letting Protection Service Scotland, with whom the deposit was held. He advised that the Respondent had not challenged the claim and, accordingly, the deposit had been returned to the Applicant. Letting Protection Service Scotland had not made any findings as to the merits of the claim given the lack of challenge by the Respondent.

3. Reasons for Decision

- 3.1 The Tribunal considered the terms of the written tenancy agreement between the parties. The Tribunal was of the opinion that Clause 16, specifically sub-paragraphs two, four, five and eight, and Clause 24 did provide a legal basis for the recovery of all the sums sought by the Applicant.
- 3.2 In the absence of any representations by the Respondent, the Tribunal simply proceeded on the basis of the submissions made by Mr McMillan at the Case Management Discussion. In respect of the costs claimed for the replacement of the worktops, the repairs to the cooker and storage heater, the maintenance of the garden, the cleaning of the carpets, the cleaning of the property and the unpaid rent, the Tribunal accepted the submissions of Mr McMillan that these were due by the Respondent. The Tribunal considered Mr McMillan's submissions in light of the pre-tenancy report provided together with the photographs of the property after the tenancy had ended.
- 3.3 With regards to the costs of redecoration of the property, the Tribunal had noted the record in the pre-tenancy report, on pages eight, nine and ten, of the scuffs on the walls of a number of walls within the property. The Tribunal also considered the extent of the damage to the paintwork

after the tenancy had ended, together with the repainting of a wall by the Respondent without permission. This was specifically prohibited by subparagraph eight of Clause 16 of the written tenancy agreement.

- 3.4 Rule 18 of the Rules allows the Tribunal to determine the application without a hearing. On the basis of the submissions made by Mr McMillan and the documents accompanying the application, the Tribunal was only prepared to find 50% of the costs of redecoration due to the Applicant. Mr McMillan advised that he accepted this. Accordingly, the Tribunal determined the application without any need for a hearing.

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.

Alastair Houston

Legal Member/Chair

— 14 JANUARY 2019
Date