



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 Housing (Scotland) Act
2014**

Chamber Ref: FTS/HPC/CV/19/2725

Re: Property at 2/2 23 St Mungo Avenue, Glasgow, G4 0PG (“the Property”)

Parties:

**Miss Patricia Gonzalez Bort, 11/6 421 Davaar Cadzow Street, Glasgow, G2 7PB
 (“the Applicant”)**

Mr Amjad Mirza, 254 Smithycroft Road, Glasgow, G33 2QZ (“the Respondent”)

Tribunal Members:

Josephine Bonnar (Legal Member) and Janine Green (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £102.50 should be made in favour of the Applicant.

Background

1. By application dated 27 August 2019 the Applicant applied to the Tribunal for a payment order. The application states that the Respondent failed to return the Applicant’s deposit at the end of her tenancy of the property. Documents lodged in support of the application include a copy tenancy agreement, a copy statement from Nationwide dated 9 April 2017, copy emails and a copy invoice from Campbell Stone Contracts Ltd dated 12 September 2019.
2. A copy of the application and supporting documents were served on the Respondent by Sheriff Officer on 15 November 2019. Both parties were notified that the application would call for a case management discussion (“CMD”) on 6 December 2019. Prior to the CMD the Respondent lodged written representations and documents.

3. The application called for a CMD on 6 December 2019. A related application under Chamber reference FTS/HPC/TD/19/2730 (“the tenancy deposit application”) also called. The Applicant did not attend but was represented by Mr Jon Zarate. The Respondent appeared in person. The Legal Member discussed the application with the parties and noted that parties were agreed that there had been a short-assured tenancy which started on 1 April 2017. The Applicant and Ms Isabella Corveddu were joint tenants. A deposit of £1150 had been paid from the Applicant’s bank account at the start of the lease. The Respondent did not lodge this deposit in an approved scheme. When the tenancy ended the Respondent failed to return the deposit to the Applicant. The Respondent referred the Legal Member to a copy invoice lodged by him from Campbell Stone Contracts Limited for £1260. He advised that this was for work carried out to the property at the end of the tenancy as a result of damage to the property and cleaning required. As this sum was greater than the amount of the deposit, he said that this should be offset against the deposit and therefore no sums were due to be repaid. This was disputed by the Applicant. The Legal Member noted that the former joint tenant, Ms Corveddu, was not a party to the application. Mr Zarate stated that the tenancy had become a sole tenancy, when Ms Corveddu moved out of the property. He had moved in and lived there after this, but no new tenancy agreement was signed. At the conclusion of the CMD both applications were adjourned to a hearing on 17 February 2020 at 10am.
4. Prior to the hearing both parties lodged further documents and written representations. The Respondent also advised the Tribunal that he would be represented by Apex Services. The Applicant made a request to participate in the hearing by conference call as she now lives in Australia. This request was granted by the Tribunal.

The hearing

5. The application called for a hearing on 17 February 2020. The Applicant participated by telephone conference call. She was represented by Mr Zarate. The Respondent attended and was represented by Mr Saitar of Apex Services. The tenancy deposit application also called for a hearing.
6. As a preliminary matter the Tribunal discussed the former joint tenant. It was noted that there was some dispute as to the joint tenant’s status at the end of the tenancy. The Respondent maintained that she had been a tenant of the property until the tenancy ended in September 2019. The Applicant stated that she had vacated the property some time before and her room taken by Mr Zarate. The Applicant was told that a new tenancy agreement was not required and that the lease would continue in her sole name. The Tribunal noted that the former joint tenant is not a party to the application. Both parties confirmed that they have had no recent contact from her. The Tribunal noted that the Applicant was one of the tenants of the property in terms of the short assured tenancy agreement. The Tribunal was therefore satisfied that the Applicant was entitled to make an application in terms of Rule 70 of the Procedure Rules in her sole name and that the Tribunal could proceed to

consider same.

7. The Tribunal noted that the Applicant seeks an order for £1150, being the full amount of the deposit paid to the Respondent. The Respondent disputes the application on two grounds. Firstly, the Applicant only paid half of the deposit as the other half was paid by the joint tenant. Secondly, the Respondent had to pay the sum of £1260 for cleaning and repairs to re-instate the property following the end of the tenancy which should be offset against the deposit. As this sum exceeds the amount of the deposit, no sums are due. The Tribunal proceeded to hear evidence from the parties and three witnesses for the Respondent.

The Applicant's evidence

8. Stated that the tenancy started on 1 April 2017 although the keys were handed over a few days before. The tenancy ended on 11 September 2019. A deposit of £1150 together with a £50 contract fee was paid from her Nationwide account. The joint tenant reimbursed the Applicant for her share of the deposit of £575. Stated that the joint tenant moved out in February 2018. The Applicant does not think the joint tenant got her share of the deposit back. They are no longer in contact. Stated that the property was in good condition at the end of the tenancy. She had cleaned the entire apartment. It was cleaner than when she moved in. Any repairs issues which occurred during the tenancy were reported. She has seen the invoice from Campbell Stone although notes that the one sent to her in October 2019 is different from the one lodged by the Respondent, although they are dated the same and for the same amount of money.
9. With regards the Campbell Stone Invoice (the version lodged by the Applicant); - Item 1 (Remove 8Nr tiles & fit with new tiles/re-grout). Accepted although there were 7 (not 8) broken tiles. The joint tenant dropped a glass bottle on the floor causing this damage. It was reported to the landlord at the time. Item 3 (Re-paint all flawed areas around the entire property). Accepted that there were three marks on a bedroom wall where the joint tenant painted her initials. No other painting was required. These are the only items which are accepted. Item 2 (Supply & fit new gloss kitchen door under sink). Damage to door was caused by a leak, not the tenant's fault. Someone came to the property about the leak. Said a whole pipe needed replacing but this didn't happen. Item 4 (Skim and fill required in B/R 1) Not needed, just required painting over the 3 marks. Item 5 (Remove/replace shower cubicle silicone) – the silicone had already been replaced, it was poor quality, not damage by Applicant. Items 6 (Deep steam clean of bathroom/kitchen) and 7 (Deep acid clean for oven)– these were cleaned as best she could at the end of the tenancy. Item 8 (replace and fit non-working bulbs) – Bulbs were purchased during the tenancy. Item 9 (windows clean inside and out) – She did not clean the windows during the tenancy and there was no window cleaner. They were not clean at the start of the tenancy either. Item 10 (end of tenancy clean). Too vague – not sure what this means. Item 11 (repair/replace door handle) – the door handle was defective/loose and when

fixed just became loose again, not damaged by tenants. Item 13(Removal of items from the drying area). Drying area used to store her luggage. When the tenancy ended, she was in Barcelona. Her boyfriend lived in another flat in the block and luggage left in the drying area with his permission. When she returned from Barcelona on 18 September 2019, it was gone. Items 12 (removal of previous tenant's belongings) and 14 (Dispose of all debris) There was no debris left. She did leave a couple of items in the bedroom which she collected from the property on her return from Barcelona. There were no other items left. 15 (Replace washing machine temperature button) The washing machine button was broken at the start of the tenancy. She didn't bother reporting it as she just washed her clothes in cold water.

The Respondent's evidence

10. Confirmed that he thinks the dates given by the Applicant for the start and end of the tenancy are correct. Confirmed that the deposit of £1150 was received – it was a joint one which the Applicant agrees. Confirmed that he instructed Campbell Stone to do the end of tenancy work and was charged £1260. He does not know why there are 2 versions of the invoice. He doesn't know why some items are on one and not the other. When the tenancy ended, he just instructed Campbell Stone to go and do the work. He can't remember if he went to the property to inspect it before he did so. Even if he did, he wouldn't remember the condition of the property. Confirmed that sometimes work is carried out to a property before it is re-let that the former tenant would not be responsible for. That was not the case here. Confirmed that the tenants had sometimes reported repairs issues to the management company, and these were attended to. He can't remember any specific such repairs. With regards to the work carried out, the witness from Campbell Stone will need to cover that. Stated that in any event she should only be entitled to half the deposit and cost of putting the property back into a lettable condition is more than that. Stated that the kitchen tiles at the property were high spec, expensive tiles. Stated that the initials on the bedroom wall were stickers which removed paint and plaster when taken off. Advised that he only has the invoice from Campbell Stone. No separate receipts etc for the tiles. Confirmed that he owns other properties which are rented out, can't remember how many. Some are leased to SERCO.

David Johnstone's evidence

11. Confirmed that he is aged 62, is a builder and works for himself under the name Rockfield Builders. Identified an invoice dated 16 March 2017 as an invoice issued to the Respondent for work he carried out to the property. The invoice shows the following – cleaning, painting and skimming, fitting light switches and supplying sofas and bulbs. Conceded that there might be an error in the arithmetic in the invoice, he doesn't prepare them. Confirmed that he did the work at the property and remembers it. He has been there since to

do a lock change. Recalls dealing with a blocked pipe issue – put a cleaner down which didn't work then plunged which did – but can't remember when. Stated that the property is a good property, better than others he has been to, and was in good condition.

Leanne Campbell's evidence

12. Stated that she is 39 and works for Campbell Stone Contracts Ltd and is a director. Number of employees and subcontractors can vary. Confirmed that her company carried out the work at the property in September 2019. She was present and did some of the work herself. When asked about the 2 invoices said she didn't know why there were 2 slightly different ones. Said when she goes to a property, she does a site audit. Whatever is needed gets done. Sometimes doesn't charge for everything. Thinks that the non-itemised invoice was issued, and she was then asked to itemise the work carried out. The itemised one is the amended one. Stated that 8 damaged tiles were removed and replaced with black speckled tiles. The hallway was painted to cover scuff marks. There were a couple of nicks that needed filling. The invoice is based on 2 days work, including labour. In total there were 5 people involved during the first day and three the second. She had to go back for a couple of things on the third day but didn't charge for that. The property was pretty messy on arrival. There was lots of rubbish that had to be put in black bags and removed. Floors had to be brushed and mopped. The shower room needed cleaned and silicone replaced. Items removed from the drying area. The front door was cleaned. Sheets and rubbish had to be removed from bedroom 1. Files and books removed from bedroom 2. A full day was spent cleaning the kitchen. Every room had crockery in it. It looked like it was being used as an Airbnb. Some extra painting was done as she had the time to do that. Stated that she couldn't say when exactly the work was done – sometime in September. She re-calls that there was a girl there when they arrived who was moving out. The date on the invoice might be wrong. Confirmed that the invoice is for 2 days work. That's always how she does it. Stated that there was a lot of stuff to clear and she had to get a skip.

Jay Mur's evidence

13. Confirmed that she is aged 36 and a student. Said she used to work for OBHI Properties until the summer of 2019. While working there she did viewings, found tenants and passed on complaints to the landlord. Confirmed that she remembers dealing with the property and the 2 tenants. Said that the girls were happy with the property when they moved in. They contacted her from time to time regarding repairs and she passed on the messages to the landlord. She visited the property from time to time. When asked if she became aware that the joint tenant was moving out said that she was told that they had some kind of disagreement to do with broken tiles and who had caused it. Said that there were complaints from other residents in the block

about the tenants and others using the drying area to drink alcohol and smoke cannabis. Said that she dealt with the property until she left the company. The company's role was to find the tenant and deal with enquiries. The rent was paid direct to the landlord and enquires were passed on to the landlord to be dealt with by him. Confirmed that she had suggested to the Applicant that the cost of the damaged tiles could come out of the joint tenant's share of the deposit if she had caused the damage, it was just a suggestion. A quote for the work had been obtained of about £500 although the work was not instructed. Confirmed that the Applicant was a good tenant at the beginning but then there were complaints about multiple people staying there and that might have been the reason for condensation issues. The Applicant had complained about that but can't remember when. Can't remember when she last went to the property. The tenants and other residents continued to contact her about the property even after she left because they had her number.

The Applicant's submissions

14. The Applicant reported damage and repairs issues as they happened. The Applicant cleaned the property herself before she moved in. There are contradictions in the Respondent's evidence. The Applicant should not have to pay for damage that was reported and not repaired. Some of the work is accepted – the marks on the wall – but not the rest of the painting. Lots of the work carried out was wear and tear and the Applicant should not be expected to keep the house as brand new. With regards the itemised invoice it is accepted that 7 tiles were damaged, and the tenants were jointly liable for that, although it was agreed that the joint tenant had caused it. The damage to the door in the kitchen was caused by a leak that was reported and not fixed. The painting carried out was for wear and tear. Items 4 and 6 were not needed. Item 5 – they reported problems with drainage, not their fault. The oven was greasy at the beginning and was cleaned by the Applicant before she moved in. The Applicant bought replacement bulbs herself. Item 9 – not clean when she moved in. Item 10 is too vague. 11 was reported by the Applicant and not repaired. 12 is questionable as items were still there when the Applicant went back to the property. 13 was not done. 14 – no real description is given. 15 was broken from the beginning and not used. The only deduction should be for the tiles. The Applicant seeks the return of all of the deposit as the Respondent should not be able to keep half just because the joint tenant has not pursued a claim.

The Respondent's submissions

15. When painting is carried out it needs to be the whole room, or you end up with different shades. It is a tenant's obligation to keep the rented property in good condition. With regard to the invoice – 1 is accepted by the tenant, 2 is the tenants responsibility, 3 – you can't paint over a scuff mark without painting the entire wall, 4 – there were holes in the wall, 5 – it is accepted that this was wear and tear, 6 – is not wear and tear, 7 – the tenants responsibility, 8 – it is accepted that it is wear and tear, 9 and 10 - tenants responsibility, 11 – not

wear and tear, damaged not just loose, 12 to 15 – tenants responsibility. Any award should be based on £575 and not £1150 as the Applicant only paid £575.

Findings in Fact

16. The Applicant was a tenant of the property between 1 April 2017 and 11 September 2019.
17. The Respondent is the owner and landlord of the property.
18. Before the start of the tenancy the Applicant paid a deposit of £575. The joint tenant also paid a deposit of £575. Both sums were transferred to the Respondent from the Applicant's bank account.
19. The Respondent did not lodge the deposit in an approved tenancy deposit scheme.
20. During the tenancy some floor tiles in the kitchen were damaged when a glass bottle was dropped on them.
21. During the tenancy the wall in the hall was marked and the wall in the second bedroom damaged.
22. During the tenancy a kitchen door was damaged by a leak.
23. At the end of the tenancy the Respondent instructed a contractor to carry out work at the property before re-letting same. He was charged £1260 by the contractor for this work.
24. When the Applicant vacated the property items of rubbish and personal possessions were left at the property. The property was left in an untidy and unclean condition.

Reasons for the decision

25. The Tribunal firstly considered the issue of the amount of the deposit paid by the Applicant. The Applicant seeks repayment of the whole deposit paid to the Respondent, although she accepts that only half of that sum was paid by her. The argument put forward is that the Respondent should not benefit from the joint tenant's failure to pursue a claim for her share. The Tribunal was not persuaded by this argument. The sum paid by the Applicant was £575 and she is therefore only entitled to pursue a claim for that amount. The Tribunal concluded that the sum which the Applicant is entitled to claim is £575.
26. The Tribunal proceeded to consider the Respondents claim that he is entitled to offset the sum of £1260 against the deposit, thereby extinguishing any liability to the Applicant. Again, the Tribunal is not entirely persuaded by this

argument. It is not disputed that the Respondent should be able to deduct the cost of any necessary work for which the tenant is liable. However, that deduction should be from the whole deposit, as the joint tenant was also liable for the condition of the property at the conclusion of the lease, since no replacement lease was ever signed, whether or not the joint tenant vacated the property at an earlier stage. The Tribunal therefore concluded that any deductions from the deposit should be from the whole amount, with the Applicant entitled to a half of any sums still owing after that deduction is made.

27. The Tribunal then considered the work itself and the extent to which the tenants could be held liable for same. The Tribunal noted that neither party lodged photographs showing the condition of the property at the conclusion of the tenancy. Furthermore, neither party was able to comment on the condition as at 11 September 2019. The Respondent was unable to recall if he inspected the property before instructing the contractor and the Applicant had gone on holiday a few days before the official end of the lease. However, she maintained that she had cleaned the property and removed all but a couple of items which she collected a few days later. The only clear evidence regarding the condition of the property came from Ms Campbell. The Tribunal found her to be credible and reliable in her account of her involvement with the property. The Tribunal was satisfied that a large quantity of rubbish and items had been left at the property, that she carried out painting work, some of which was needed to cover marks on walls and that the other items listed on the invoice were also carried out. The explanation regarding the 2 invoices (that she was asked to provide an amended/itemised one) seems plausible. In any event she explained that her invoices do not always include everything that was done. It was clear to the Tribunal that the invoice could not be taken as an exact reflection of the work carried out. She charged the Respondent for the number of man hours provided plus materials and the invoice lists some of the specific works which were included. As she herself had been on site she confirmed to the Tribunal that the 15 items listed were carried out and the Tribunal was satisfied that this was the case.

28. From the evidence and submission, the Tribunal notes that the Applicant concedes that tiles in the kitchen had to be replaced. The Respondent concedes that items 5 (the silicone in the shower) and item 8 (the replacement of bulbs) should not be the Tenants responsibility. These would therefore have to be deducted from the invoice total. Although there was some evidence given that the tiles were expensive, and that an estimate had been obtained at some point for the tiling work of about £500, the Tribunal was not provided with any clear evidence as to the value of this particular item or indeed the 2 conceded by the Respondent.

29. The Tribunal proceed to consider the disputed items –

a. The kitchen cupboard door. The Tribunal was satisfied from the Applicant's evidence that this damage was the result of a leak at the property. not the fault of the Applicant and the joint tenant.

- b. Painting. The amount of painting actually carried out was not clear. From the evidence of Ms Campbell, it was established that some, but not all, of the painting carried out was needed to cover marks on the walls which had occurred during the tenancy. She advised that as she was on site, some additional painting was done. The Tribunal is satisfied that any costs associated with this additional painting should not be deducted from the deposit. However, as no breakdown is provided, and as the witness stated in her evidence that extra work was carried out and not charged, it may be that any adjustment for this would not be significant.
 - c. The Tribunal accepted the evidence of the witnesses that some repair was needed to the bedroom wall where stickers or blue tack had caused damage to the plaster.
 - d. The Tribunal accepted the evidence that the bathroom, kitchen, windows and oven required to be cleaned. The Applicant conceded in her evidence that she had not cleaned the windows nor employed a window cleaner. It seems likely that after 2 and half years some cleaning would be required. Ms Campbell said in her evidence that almost a full day was spent of the kitchen.
 - e. The Tribunal was also persuaded by the evidence of Ms Campbell that a large quantity of debris and other items, such as crockery in all the rooms, had to be cleared from the property and that the property was very messy on her arrival.. The Applicant had been on holiday for several days by that date, although another girl appeared to be staying there and was in the process of moving out. With regard to the items in the drying area, the Applicant had a reasonable explanation for these items being left and they were not actually in the flat. However, no evidence was led that the Respondent knew that these had been left with the Applicant's boyfriend and that she intended to come back for them.
 - f. The Tribunal agreed with the Applicant that the reference to "end of tenancy clean", being item number 10 on the list, is somewhat vague. However, it appears from this evidence that this mainly related to brushing and mopping floors in the property,
 - g. The Tribunal accepted the evidence of the Applicant about the door handle and the washing machine button. No evidence was produced by the Respondent that these items were damaged by the Applicant, as opposed to being repairs issues for which the Respondent was responsible.
- 30.** The Tribunal therefore concluded that deductions from the overall cost of the work in the invoice should be made as follows:- the shower silicone, the bulbs, some of the painting, the kitchen cupboard door, the door handle and the washing machine button. The Tribunal is however satisfied from the evidence that the remaining items were the responsibility of the Applicant, and that these other items accounted for most of the time spent by the contractor at the property. The Respondent was issued with an invoice for 2 days work. The Tribunal determined that the Respondent should be entitled to offset

three quarters of the cost of the work against the whole deposit paid. Accordingly, the sum of £945 falls to be deducted from the sum of £1150 leaving a balance of £205, of which the Applicant is entitled to £102.50

Decision

31. The Tribunal determines that an order for payment of the sum of £102.50 should be made in favour of the Applicant.

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
Josephine Bonnar, Legal Member/Chair

17 February 2020