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

Chamber Ref: FTS/HPC/CV/19/2727

Re: Property at 36 Rubislaw Square, Aberdeen, AB15 4DG ("the Property")

Parties:

Mr Ewen Ritchie, 36 Rubislaw Square, Aberdeen, AB15 4DG ("the Applicant")

Miss Megan Finlayson, Miss Emma Lowson, 18 Helen Street, Forfar, Angus, DD8 2HW; 1 Drummer's Dell, Forfar, Angus, DD8 1XX ("the Respondent")

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)
Mlke Scott (Housing Member)

Decision
The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that a payment order for the amount of £42.65 is made.

Background

[1] The application was made on 22 August 2019. The application is for an order for payment of a sum of £ 2,642 for damage and cleaning costs.

The claim consists of the following headings:

New Bed	£420
Vacuum Cleaner	£130
New Mattress	£100
Cleaning	£342
Steam Mop	£ 80
Dolphin Statue	£2,000
Pots/Pans and Utensils	£ 70
Damages to Doors and Walls	£300
	£3,442
Less : Deposit which is held with Safe Deposits Scotland and is going through Adjudication Process	£800
	£2,642

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[2] A Case Management Discussion (CMD) took place on 7 November 2019 in Aberdeen. The Applicant attended with his representative Ms Murray, both Respondents attended.

The CMD Note and related directions are referred to for their terms.

[3] In answer to the direction the Applicant lodged a bundle of evidence on 27 November 2019 including a copy page 12 of the lease as the basis for his claim and an invoice from Lochside Plastering for £320 for "repair damaged walls where picture hooks were and dents to walls throughout property", a cleaning quote for a total of £342 from First Class Cleaning dated 3 July 2019, indexed and labelled photographs no 1 to 50 as per the index. The Respondents lodged an indexed bundle of further photographs of the state of the property on 27 June 2019 on 3 December 2019 and a photograph of the kitchen of 27 June 2019 on 22 November 2019. The productions are referred to and held to be incorporated herein.

[4] A postponement request by the Respondent Ms Finlayson was refused by the Tribunal. On 14 January Ms Finlayson lodged further representations with a text and photograph exchange dated 22 May 2019 appended and asked for the case to be dismissed.

[5] The hearing on 22 January 2020 was attended by the Applicant and his representative Ms Murray and the Respondent Ms Lowson with Mrs Finlayson attending as representative for the first named Respondent Ms Finlayson, who was unable to attend in person.

The Hearing

[6] The Tribunal chair explained the procedure. Evidence was provided by the Applicant and Ms Lowson on each claim item in turn and the Tribunal heard evidence from both parties on all elements included in the claim.

[7] During their evidence both parties stated that a dispute over the deposit amount of £800 had been determined by Safe Deposit Scotland (SDS) on 25 October 2019. A copy of the SDS decision was lodged by the Respondent with the Applicant's consent This is referred to for its terms and held to be incorporated herein. SDS had awarded £60 out of the £800 deposit to the Applicant as a nominal amount in respect of the claim for a missing vacuum cleaner and returned £740 of the deposit to the Respondents, having found that the other claims, which appear to be in the most part identical to the claim in these proceedings, could not be considered to be sufficiently evidenced.

[8] Although neither party made detailed submissions on the matter, the Applicant argued that the SDS decision had not taken into account most of their productions as these had not been date stamped and the Tribunal should make a decision on all items. They wished the full amount claimed to the awarded.

[9] Ms Lowson raised the issue of whether or not the claim before the Tribunal could still be relevant following the determination by SDS. The Respondents object to any

award being made on the basis that this had been covered in the dispute resolution process by SDS.

Discussion on the issue of the deposit determination:

[10] In order for the Tribunal to be able to consider the individual claim items in the application it had to first determine whether or not a decision could be made by the Tribunal or whether, as the Respondents averred, the determination and findings of the SDS decision of 25.10.19 would mean that some or all of the claim had already been finally determined and thus could not be further considered. The Tribunal identified that this could be argued on two alternative grounds. The first being that the matter had been fully determined and would then be considered *res judicata* under common law. The second ground that Clause 11 of the tenancy agreement might limit the jurisdiction of the Tribunal.

[11] The tenancy agreement in clause 11 states "Where the Tenant owes the Landlord an amount greater than the amount held by the tenancy deposit scheme, the Tenant will remain liable for these costs, and the Landlord may take action to recover the difference from the Tenant. "

[12] Whether a matter has already been decided to the exclusion of a further determination under common law would depend on whether the matter has been the subject of judicial determination by a competent Tribunal on the same matter, between the same parties and on the same grounds. If that was the case then the Tribunal would have no further jurisdiction over the matter.

[13] Neither party in this case disputed that the claim of £3,442 far exceeds the deposit amount of £800 and an application to the Tribunal for the difference of £2,642 was competent when the application was made.

[14] The question arising out of the determination by SDS is in how, if at all, the determination of dispute resolution in a deposit scheme on what is owed by the tenant to the landlord in terms of Clause 11 will bind a Tribunal and whether or not any or all of the amount previously decided on by SDS can be considered afresh by the Tribunal.

[15] The Tribunal for this purpose considered the provision in the tenancy agreement dealing with the deposit, the allocation of jurisdiction in terms of the Housing (Tenancies) (Scotland) Act 2016 and the nature of the decision made by dispute resolution in approved deposit schemes in terms of the Housing (Scotland) Act 2006 and Part 6 of The Tenancy Deposit Schemes (Scotland) Regulations 2011

[16] The nature of the tenancy deposit is defined in S 120 of the Housing (Scotland) Act 2006, which reads:

Tenancy deposits: preliminary

(1)A tenancy deposit is a sum of money held as security for—

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(a)the performance of any of the occupant's obligations arising under or in connection with a tenancy or an occupancy arrangement, or
(b)the discharge of any of the occupant's liabilities which so arise.
(2)A tenancy deposit scheme is a scheme for safeguarding tenancy deposits paid in connection with the occupation of any living accommodation.

[17] The nature of the matters engaged in the dispute resolution mechanism of an approved scheme are described in The Tenancy Deposit Schemes (Scotland) Regulations 2011 which state:
Dispute resolution mechanism
33.—(1) A scheme administrator must make available a mechanism for the resolution by an adjudicator of disputes between landlords and tenants about the amount of the tenancy deposit to be repaid to the tenant at the end of the tenancy ("dispute resolution").
(2) The dispute resolution mechanism must be fair and cost-efficient having regard, in particular, to—....
(h)the extent to which that procedure will be proportionate to the value of the disputed amount;
36.—(1) The adjudicator must decide any dispute within 20 working days of receipt by the adjudicator of the referral.
(2) Within 5 working days of reaching a decision on a dispute, the adjudicator must give notice of a decision in writing to the scheme administrator, the landlord and the tenant and must set out—
(a)the facts on which the decision is based;
(b)the reasons for the decision; and
(c)the amounts of tenancy deposit to be repaid by the scheme administrator to the tenant and to the landlord.

38.—(1) If, after consideration of the application under regulation 37(1) and any representations regarding it, the scheme administrator considers that there is a reasonable ground for believing that the adjudicator may have erred in fact or in law, the scheme administrator must accept the application and refer the decision of the adjudicator under regulation 36 for review by an adjudicator who was not involved in deciding the original referral.
...
(3) A decision of an adjudicator under paragraph (2) on a review is final.
(4) The scheme administrator must repay the tenancy deposit in accordance with the adjudicator's decision on the review within 5 working days of receipt of the notice of that decision

[18] The interpretation notes further state: Part 6 sets out the type of dispute resolution mechanism that must be made available. The dispute resolution mechanism must be fair and cost-effective and must incorporate the principles and procedures in regulations 34 and 35. These include that dispute resolution must be provided free of charge and must not be compulsory for tenants. Adjudicators must be independent and their decisions binding on the scheme administrator.

[19] The Tribunal considered that it is clear from these provisions that the dispute resolution scheme was set up to provide an efficient and proportionate mechanism to

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decide to whom the scheme administrator should repay the deposit held as a security for the performance of the tenant's obligation under the tenancy agreement. It is also particularly clear from Regulation 33 (2) (h) above that the mechanism is set up proportionate to the amounts which are likely to be involved. As described by the parties and set out in the Regulations, the dispute resolution mechanism is a simplified process which does not allow for a hearing and decides matters solely on the basis of documentary evidence presented in a particular way. This reflects the matter of proportionality to the amounts involved, as these are limited to the deposit amount only.

[20] The Tribunal on the other hand can consider oral evidence and thus offers a much more comprehensive consideration of the evidence presented in a case. Issues of credibility can be considered. The reason for this is clearly that amounts involved in civil disputes before the Tribunal can far exceed the amounts which can be considered in the dispute resolution of a scheme administrator, which only ever deals with the return of a tenancy deposit. In terms of S 71 of the Private Housing (Tenancies) (Scotland) Act 2016 the jurisdiction of the Tribunal extends to the jurisdictions Sheriffs had in civil cases of this nature.

[21] The Tribunal thus considered that the dispute resolution mechanism deals with the allocation of repayment of a security only. What has been decided is not the tenant's civil liability for damages or rent arrears due to the landlord but the allocation of repayment of the security held by the scheme. This is not the same matter as the claim to be decided by the Tribunal. Therefore the decision and findings of the dispute resolution cannot exclude the jurisdiction of the Tribunal and cannot bind the First - tier Tribunal by findings in fact on liability of a tenant under the tenancy agreement.

[22] This approach is also not in conflict with the contractual provision in this case in form of Clause 11 of the tenancy agreement, which reflects the Scottish Government Model Tenancy provisions for Private Residential Tenancies. Once the deposit scheme no longer holds any funds, as in this case, because they have been dispersed by the scheme administrator following the dispute resolution conclusion, then in terms of Clause 11 of the tenancy agreement the landlord can take action regarding any funds owed. The Tribunal then has to determine the issue of civil liability on the basis of the evidence before it.

Findings in Fact

[23] Based on the evidence from both parties at the hearing and the productions lodged by both parties the Tribunal make the following findings in fact:

1. The parties entered into a Private Residential Tenancy for the property on 1 March 2018 which ended on 28 June 2019.
2. No formal check in inventory was prepared.
3. No formal check out inventory was prepared.
4. At the start of the tenancy a wooden dolphin statue, two beds and mattresses and some kitchen utensils and cookware were provided with the property.
5. One of the beds provided, a double sleigh bed, had been bought in 2017.
6. On or around 18 or 19 May the wooden middle support of the sleigh bed broke.

7. There was no apparent reason for the break. .
8. The wooden beam was initially shored up in a temporary repair by a wooden construction on 22 May 2019.
9. On or around 21 June 2019 the bed was repaired by MJF Joinery
10. No vacuum cleaner was provided at the start of the tenancy.
11. On 2.3.2019 at 13:40 hours the Applicant had promised by message to drop off a vacuum cleaner on the following day.
12. On 2.3. 2019 at 16:49 hours the Respondents had sent a message including the words "I appreciate the hoover as well".
13. No vacuum cleaner was left in the property after the Respondents moved out.
14. On or around the end of March 2018 a new double mattress was provided on request of the Respondents and exchanged for one of the mattresses present at the start of the tenancy.
15. At the end of the tenancy the mattress provided during the tenancy was stained with a circular yellow stain and the fabric on the back of the mattress showed a tear.
16. The cost of the new mattress provided during the tenancy was £93.19.
17. Shortly after the start of the tenancy the Applicant had arranged for the property to be cleaned.
18. This included the oven and refrigerator.
19. The refrigerator inside and the inside of the oven had not been cleaned prior to the Respondents moving out.
20. The rest of the property had been cleaned appropriately.
21. The Applicant has to date not had the property professionally cleaned.
22. An un-itemised quote of £342 for professional cleaning of the whole property has been obtained by the Applicant
23. No steam mop was provided at the start of the tenancy and no steam mop was left in the property at the end of the tenancy.
24. The dolphin statue present in a corner of the living room was undamaged on 27 June 2019 when the Respondents moved out.
25. The kitchen utensils and cookware present in the property at the start of the tenancy remained in the property at the end of the tenancy.

Discussion on Evidence and Reasons for Decision

[24] The Applicant is claiming the amounts sought as damages for breach of the tenancy agreement obligations by the Respondents. The tenancy agreement provides:

Clause 17 : " The Tenant agrees to take reasonable care of the Let Property an any common parts, and in particular agrees to take all reasonable steps to: ...ensure the Let property and its fixtures and fittings are kept clean during the tenancy."

Clause 18 :" All fixtures and fittings provided by the Landlord in the Let Property should be in a reasonable state of repair and in proper working order. The Landlord will repair or replace any of the fixtures, fittings or furnishings supplied with become defective and will do so within a reasonable period of time. Nothing contained in this Agreement makes the Landlord responsible for repairing damage caused wilfully or negligently by the Tenant, anyone living with the Tenant or an invited visitor to the

Let Property. ..... The Tenant will be liable for the cost of repairs where the need for them is attributable to his or her fault or negligence..."

Clause 25:" The Landlord shall arrange for an inventory to be prepared of the contents, furniture and furnishings in and upon the Let Property and their condition and the state of decoration of the Let Property ..."

Clause 28: "The Tenant shall not carry out an alterations, additions or redecoration to the Property without the prior written consent of the Landlord or Landlord's Agents. Without prejudice to the foregoing generality, the Tenant shall not drive nails into the wall of the Let Property or interfere in any way with the decoration or fixtures and fittings of the Let Property."

[25] In order to claim damages for a broken item under the tenancy agreement the Applicant would have to satisfy the Tribunal on the civil standard of proof that the item was provided was in good condition at the start of the tenancy, that the Respondents had been responsible for the damage to the item and that the amount claimed was appropriate taking into account wear and tear. Clause 25 of the tenancy agreement creates an obligation for the landlord to prepare an inventory of the state of the property and contents at the start of the property. No such inventory had been prepared.

Item 1, New Bed

[26] This was claimed at £420. The Applicant had produced an invoice for an order confirmation from Comfy Night Beds for a purchase of £485 date 25.11.2019.

Applicant's position:

[27] The Applicant provided an order confirmation of a bed purchased in November 2019 for the amount of £485. The amount claimed for a replacement bed was stated in the claim as £420. At the hearing the Applicant stated he was relying on the photographs 11-20 lodged in the bundle of 27.11.19 to show the damage to the bed. The damage had been reported to him by the Respondents in an email. The repair done was not to his satisfaction. He stated it had snapped in the middle and metal part was bent as shown in picture 13. He referred to pictures 17 and 18 to show that a wooden frame had been built underneath. He had provided the correct details for the company where the parts should be purchased to the Respondents and photograph 11 showed the bent metal part after the tenants had left. He had been unaware there would be a temporary repair, which he thought looked better than the final one. He did not consider the final repair was appropriate

[28] His representative stated that the bed had been bought in 2017 for the previous tenant but there was no invoice to lodge. She conceded that the photographs 15-20 in their bundle must have been taken earlier but insisted photographs 11-14 were taken on 28.6.2019. The replacement bed was the same type and only one or one and a half years old. She argued a bed would have an average lifespan of 6 to 7 years and stated that when the Respondents moved in there was no complaint about the bed.

Respondents' position:

[29] Ms Lowson stated the sleigh bed was the bed used by her and whilst it had broken she did not know why and she had first arranged a temporary repair shown in photographs 17 and 18 and then a professional repair from a joiner for which she had produced an invoice and payment confirmation. She stated the Applicant had told her to get it fixed or replaced. The photographs the Applicant had referred to, namely 17 and 18, did not show the state of the bed when she moved out. The photograph lodged by her of the repaired bed showed the bed after the repair on 27.6.2019. The photographs referred to by the Applicant could not have been taken on 28.6.2019 as stated on the photographs lodged as the bed by then had been repaired by a joiner as shown in her photographs 22 - 24 taken on 27.6.2019. The photographs lodged by the Applicant had been taken after she had reported the break and he had attended to take pictures in May 2019. This had also been brought to the Tribunal's attention in the email of 14.1.2020 when the photographs of the text exchange had been lodged dated 22.5.2019. Her slipper could be seen under the bed in photograph 20 of the Applicant's bundle showing she still lived there at the time. She was not sure what repair exactly the joiner had done but he had been asked to repair the bed and sent her an invoice which she paid.

[30] Mrs Finlayson stated there was no evidence to show the state of the bed when the Respondents moved in as there was no check in report and the Respondents had gone to a professional to have it repaired..

Tribunal's considerations:

[31] The Tribunal in considering the evidence notes that the Applicant had not provided proof of the state and condition of the bed at the time the Respondents moved in. There was no inventory and the Respondent had stated the bed had simply given way. This was also their position stated in the message sent to the Applicant on 10/12/2018, 14:29:07 included in the Respondent's productions Evidence 008 lodged 21.10.2019.

[32] The Tribunal noted that the Applicant had lodged photographs with a date stated as 28.6.2019, which could not have been taken on that date as the photographs taken by the Respondents showed that the wooden middle part of the bed frame had been repaired and could provide vouching for that repair. The date stated as the date the Applicant had taken some of the photographs was clearly not correct and this calls into question the reliability of the dates on other photographs lodged by the Applicant.

[33] Although the Applicant stated photographs 13 and 14 showed a bent metal part, the Tribunal considered that the photograph did not clearly evidence any bend in the metal part caused by the Respondents.

[34] The Tribunal preferred the evidence provided of the Respondent who could show the condition of the bed frame after the repair and proof of the repair. The Tribunal also believed Ms Lowson that the bed had given way whilst she had been sleeping and was not damaged by any particularly damaging activity on her part. On balance of probability the Tribunal considered that the Applicant had not evidenced that the Respondents had damaged the bed trough fault or negligence as would be required for a claim of damages under Clause 18 of the tenancy agreement. There could have been a pre-existing weakness of the frame. The Applicant had no proof

of the state of the bed when the tenancy commenced. The Tribunal also considered that following the break the Respondents had arranged an appropriate repair, which had been professionally carried out. The Tribunal considered that no payment is due by the Respondents to the Applicant for the repair of the bed.

Item 2: Vacuum Cleaner

[35] This was claimed at £130. The Applicant had produced an invoice for a Henry Eco Vacuum £119.00 dated 5.7.2019

Applicant's position:
[36] The Applicant's position was that the vacuum cleaner, which he stated was a Henry hoover, was bought at the start of the tenancy and that the Respondents had acknowledged receipt by text. He stated the original price of the vacuum cleaner was around £130 but could not provide a receipt and was not sure where it was purchased. The text message referred to reads:2.3.2018: "Hi Ewan, That's great, thank you very much. I appreciate the hoover as well, We will keep it in good condition. ....". Ms Murray stated the average lifespan of a vacuum cleaner would be maybe 5 years.

Respondents' position:
[37] Ms Lowson stated that when the Respondents moved into the property there was no vacuum cleaner. She referred to "Evidence 002" of the bundle of 21.10.19 showing message 2 Mar 2018 13:40 "Hi Emma it's Ewan, iv got someone in cleaning the flat just now for u, Apologies that it wasn't cleaned properly before. .... I'm back tomorrow so I'll nip in pic up a hoover for u emma and drop it off. There are wooden floors mops for cleaning the floor s but getting a hoover is no problem...." She explained the return message from her to the Applicant at 16:46 hours that day was simply an acknowledgement of his promise to deliver a vacuum cleaner and thanking him in advance, not a message to acknowledge the actual receipt. He had said in his message of 2 Mar 2018 "I'll be back tomorrow.." and her text acknowledging that message had been sent on the same day as his text 3 hours later. There was never a vacuum cleaner delivered and she had in fact taken the vacuum cleaner from her own house to use it in the flat. When asked why she had not asked about the vacuum cleaner afterwards she stated it was not a big deal.

[38] Mrs Finlayson pointed out that there was no inventory showing a vacuum cleaner and the evidence lodged only related to an item purchased after the Respondents had moved out.

Tribunal's considerations:
[39] The Tribunal considered on balance that there was insufficient evidence that a vacuum cleaner had been supplied by the Applicant. There was no inventory to show a vacuum cleaner. The text message by the Applicant was sent at 13:40 hours on 2.3.2018 referring to him returning on 3.3.2018. The reply "I also appreciate the hoover" was sent on 2.3.2018 and the Tribunal found the statement by the Respondent Ms Lowson credible and logical that she was thanking the Applicant in advance for the promised item. Given her explanation the Tribunal did not believe that the text statement relied on by the Applicant was an acknowledgement of a delivery. The claim is rejected.

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Item 3: New Mattress

[40] This was claimed in the application at £100. The Applicant had lodged an Amazon order confirmation showing the value of the item at £93.19 and photographs of the state of the mattress at the end of the tenancy under numbers 34, 40 and 42.

Applicant's position:
[41] The Applicant gave evidence that the mattress had been newly purchased during the time of the tenancy and was delivered to the Respondents by Ms Murray. Photographs 34, 40 and 42 showed the mattress on 28 .6.2019 with a yellow circular stain and a rip in the fabric. The Applicant had lodged a order confirmation for a new mattress dated 8 March 2018 for the price of £93.19. He stated that was the newly purchased mattress.

[42] Ms Murray stated that from her own knowledge she could verify that the tenants had stated the mattress was not comfortable and so a new one was bought and she had delivered this to Ms Lowson in person

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Respondents' position:
[43] In the representations by Ms Finlayson of 21.10.2019 she had stated "mattress was provided to us with a stain on it pre-tenancy. We simply turned it over and used it for the 16 months we stayed in the property. No inventory to state otherwise." Ms Lowson acknowledged that this must be a mistake as she recalled that the new mattress was delivered and swapped for one provided on the other bed. The Respondents had been aware of the stain but not the rip in the fabric.

Tribunal's considerations:
[44] The Tribunal considered that as the Respondent had confirmed the receipt of the newly purchased mattress shortly after the start date of the tenancy and the presence of a stain on the mattress when the Respondents moved out, the absence of a check in and check out inventory in for this item was not relevant. The Tribunal is satisfied that the mattress must have been damaged during the tenancy period. The statement of Ms Finlayson in the arguments presented in writing on 21 October 2019 was clearly incorrect. The Tribunal did not believe that the Respondents would have simply turned around a mattress delivered with a large stain and not mention this to the landlord. It was admitted that the stain was present at the end of the tenancy. The Tribunal thus concludes that the stain was not on the mattress when it was delivered and that the Respondents are liable for the stain and tear.

[45] The mattress at the end date of the tenancy was one year and 4 months old. At the end of the tenancy the mattress even in good condition would not be a new item and calculation of any damages must take into account normal wear and tear. Considering that the average lifespan of such an item (as e.g. set out in the Safe Deposit Scotland A guide to product lifespans) would be up to 8 years and taking into account the age of the item as above, the Tribunal calculated the amount due by the Respondents to the Applicant in damages for a breach of Clause 18 of the tenancy agreement as follows: £93.19 new price :96 (months of average lifespan) =£0.97. £0.97x16 (months of tenancy duration) =£15.53. £93.19-£15.53= £77.65..

The Tribunal awards £77.65 of the claim for a breach of Clause 18 of the tenancy agreement.

Item 4: Cleaning

[46] This was claimed at £342 and a quote for cleaning from First Class Cleaning dated 3 August 2019 was produced. The Applicant's bundle include photographs 1-10, 23-27, 29-33, 35-39, 41-45, 47-50 regarding this matter.

Applicant's position:
[47] The Applicant gave evidence that no new tenant had moved in as there was still work ongoing and the property will require cleaning prior to a new tenant moving in. He also stated that cleaning would be carried in any event out prior to a new tenant moving in. His representative referred to the state of the fridge, oven dishwasher and bathroom and argued that the state of these items was not satisfactory and should have been cleaned prior to moving out.

Respondents' position:
[48] Ms Lowson gave evidence that she and her mother had spent one and a half days cleaning the property prior to the end of the tenancy and referred to her photographs time stamped 27/6/2019 of the kitchen and the photographs in the Respondents' bundle 1-6, 8-27 which she stated were taken on 27.6.2019 and showed the property in a clean condition. She referred to the photographs lodged dated 01/03/2018 showing the dirty state of the property when the tenancy started. She referred to the SDS ruling that the property had been cleaned to a "high standard". She confirmed that after the tenancy started the Applicant arranged cleaning and after that the state of cleanliness was "ok". The photographs of the bathroom showed discolouring of the sealant not mould and could be cleaned with bleach. She confirmed that the cooker and fridge were clean when the Respondents moved in and that she had not cleaned the inside of the oven.

[49] Mrs Finlayson argued that as no cleaning costs had been incurred these could not be claimed and that in any event the property had been left properly cleaned. Because it is expected that a landlord cleans a property prior to tenants moving in there would be no expenses to the Applicant that would not be incurred anyway.

Tribunal's considerations:
[50] The Tribunal in directions after the CMD had asked for an itemised cleaning quote so that specific items could be allocated if necessary. This was not provided. The Tribunal having taken into account the photographic evidence of both parties is satisfied that although the property was overall left in an appropriate state of cleanliness by the Respondents, the inside of the oven and the fridge had not been cleaned and would require additional cleaning apart from the cleaning undertaken at a usual changeover of tenants. There was no itemised quote and no actual invoice for cleaning the oven and fridge interior. In the absence of any basis for the calculation of the cost the Tribunal awards an amount of £25 as nominal damages for the additional work necessary. This represents the inconvenience arising from for a breach of the cleaning obligations stipulated in Clause 17 of the tenancy agreement.

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Item 5: Steam Mop

[51] This was claimed at £80. The Applicant had produced an invoice for a steam mop for £44.99 dated 5.07.2019.

Applicant's position:
[52] The Applicant claims the mop was present at the start of the tenancy. There is no check in inventory. He confirmed that there was no receipt he could produce for the steam mop he states was in the property.

Respondents' position:
[53] Ms Lowson stated that no steam mop was ever received from the Applicant and there was no steam mop provided with the property.

Tribunal's considerations:
[54] The burden of proof on the civil state of proof in this case lies with the Applicant. Clause 25 of the tenancy agreement requires a check in inventory to be prepared. The Applicant had not done so and was unable to provide documentary proof that the item was provided in the property. The purchase of an item after the end of the tenancy is no proof that the item was present at the start of the tenancy. Ms Lowson gave clear and credible evidence that the item was not provided. On balance The Tribunal considered that the Applicant had not been able to prove that the item was ever provided. The claim is rejected.

Item 6: Dolphin Statue

[55] This was claimed at £2,000. A printout of a dolphin sculpture item for sale on ebay at the price of £1,650 was lodged by the Applicant.
The Applicant's bundle contains photographs 22, 28 and 39 of the dolphin statue.
The Respondent's bundle contains photographs 7 and 20 of the dolphin statue.

Applicant's position:
[56] The Applicant stated in evidence that the statue had been purchased in Bali on a holiday for approximately £3,000 but did not have a receipt. He relied on the ebay item to show an approximate value. He stated when he returned to the property on 28.6.2019 a fin had broken off the statue. He then claimed the statue could not be used again as the broken fin led to a sharp edge, which would be against health and safety if he left it in the property for other tenants .He averred he would have to dispose of it. He had forbidden the Respondents to move any items within the property but they had moved it and he thinks the fin broke when it was moved. He had not had it repaired because someone told him this would be impossible without the repair being noticeable due to the colouring of the wood. He had no quote for a repair. Ms Murray stated that the photographs they had produced were taken on 28.6.2019 and clearly showed damage to the fin.

Respondents' position:
[57] Ms Lowson stated she had moved the statue herself and the photographs taken on 27 .6.2019 when the Respondents moved out showed the statue undamaged and in the place where it had been left by her after moving it. She explained that the Respondents had asked if the Applicant could remove the item at the start of the

tenancy, which he declined. The Respondents had moved the item into a cupboard and only put it back into the living room when they moved out. She stated there was no damage when the Respondents moved out. She referred the members to photograph 7 of her bundle, which shows that the tip of the fin is a lighter colour and can clearly be seen to still be in place on the photographs. Photograph 20 shows the location of the statue where it was left in the living room. She herself had moved the item and was sure it had not been damaged.

[58] During the hearing Ms Finlayson showed the parties and the panel an image on her mobile telephone which showed the photograph number 7 with the time stamp 27.6.19 11:23 sent from Megan Finlayson's telephone. Although Ms Finlayson could not attend she had sent the image in response to a request by Mrs Finlayson during the hearing to show the time stamp, which had not transferred to the printout of the photograph lodged. The Tribunal had accepted this form of evidence during the hearing as it was clearly relevant and the Applicant had not objected.

Tribunal's considerations:

[59] The burden of proof that the item was damaged and the damage caused by the Respondents rests with the Applicant. He produced photographic evidence dated 28.6.2019 showing a very small piece of wood missing from the tip of one fin of the statue. The Respondents produced evidence to show that on 27.6.2019 the statue was in situ and undamaged. The Tribunal accepts that at some point between the photograph taken on 27.6.2019 and the photograph taken on 28.6.2019 there was minor damage to the statue as shown in the photographs presented by the Applicant. However, the Tribunal also accepts that the statue was undamaged at 11:23 on 27.6.2019 when the Respondents' photographs were taken and when the statue was already in its place. The Tribunal found the evidence of Ms Lowson credible. She had moved the item herself and could prove clearly on photograph 7 of the Respondents' bundle that after she had moved it, it was still undamaged. The Tribunal notes on the other hand that the Applicant's evidence, especially his evidence that because of a sharp edge on a small broken fin the statue was unusable and lost all value seemed exaggerated. The Applicant had put forward the theory that the most likely cause of any damage would be the move of the statue. But there was clear evidence it had remained undamaged during that activity. If it had not been damaged in the move from the cupboard to the living room there was then no evidence for any obvious cause for the damage. Whilst minor damage did at some point occur, it is for the Applicant to prove on the balance of probability that the damage was caused deliberately or negligently by the Respondents. The onus of proof is on him In the absence of any conclusive evidence that the damage was caused by the Respondents the claim is rejected.

Item 7: Pots/Pans and Utensils:

[60] This was claimed at £70. There were no receipts lodged.
The Applicant's Representative confirmed there were no receipts but stated new items were purchased for the previous tenant 6 months prior to the Respondents moving in.

Applicant's position:

[61] The Applicant stated that there was a Tefal frying pan, a small frying pan, pots of different sizes and various utensils including various sharp knives provided at the start of the tenancy and missing afterwards.

Respondents' position:
[62] Ms Lowson stated there had been 3 silver coloured pots when they moved in and when they moved out. In a message she had advised the Applicant where these had been left. She does not recall there ever being a frying pan. The Respondents had left a kettle and microwave they had purchased themselves.

[63] The Tribunal concluded that the Applicant had not produced sufficient evidence that the items claimed were present at the start of the tenancy and were missing at the end of the tenancy. There were no invoices showing purchase of these items and no inventory confirming what was provided. The Applicant was very vague in his recollection of what may have been provided whereas Ms Lowson could clearly recall specific items which had been provided and which were left at the end of the tenancy. The claim is rejected.

Item 8: Damages to Doors and Walls:

[64] This was claimed at £300. An invoice from Lochside Plastering dated 18 November 2019 was submitted in evidence. The Applicant produced photographs number 21 and 46 from his bundle.

Applicant's position:
[65] The Applicant stated in evidence that the Respondents had left holes in the walls and picture hooks up when they were told not to. His representative Ms Murray stated that the previous tenant had not left any damage and the hooks shown in the photographs had not been there before. There was damage to the walls from door handles hitting the wall but no photographs had been lodged to show these.

Respondents' position:
[66] Ms Lowson stated that the Respondents had taken down pictures and hung their own on the hooks already in place, They had not put in any additional picture hooks and there was no damage to any walls from door handles. She referred to photograph 8 of her bundle showing the wall in the hallway without marks.

[67] The Tribunal did not consider that the Applicant had provided sufficient evidence to prove that any damage had occurred. There was no inventory to show the state of the walls and the location of picture hooks at the start of the tenancy. The photographs lodged only showed two picture hooks against a blank wall, which could be located anywhere. The photographs 8 and 9 of the Respondent's bundle showed the hall and no dents in the plasterwork. It would have been easy for the Applicant to produce photographs of any actual damage to the walls but he had not done so. The burden of proof was on him to evidence that the walls had been damaged by the Respondents. The Tribunal found there was no evidence to support the claim of damages for breach of the Respondents' obligations under Clauses 18 and 28 of the tenancy agreement. The claim is rejected.

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Conclusion:

[68] Overall the Tribunal concludes that damages of £77.65 are due by the Respondents to the Applicant for the stain and rip to the new mattress in terms of their obligations under Clause 18 of the tenancy agreement and that nominal damages of £25 should be awarded for breach of the cleaning obligations in terms of Clause 17 of the tenancy agreement with regard to the inside of the oven and refrigerator.

[69] However, the landlord has already received £60 of the tenancy deposit from the deposit scheme and the original application was calculated on the basis of a deduction of £800 from the total sum due.

[70] Practically, in the vast majority of cases there will be no discrepancy between the allocation of the deposit and any findings of a Tribunal on liability of a tenant in damages or rent. Either both find that there is nothing due to the landlord or, if the deposit was allocated to the landlord and there are additional sums due, the outstanding rent or loss to the landlord in damages will be calculated under deduction of the sums already received.

[71] In this case there the matter is more complicated. The deposit had been released to the Respondents under deduction of £60. The Tribunal considers that the amount of £60 has reduced the loss of the Applicant from any breach of obligation by the Respondents under the tenancy agreement. The Tribunal does not consider that £800 are to be deducted from the sum of any liability for damages established by the Tribunal as the final amount is below the total sum of £2,642 claimed in the application and the deduction of £800 related to the situation prior to the deposit being distributed.

[72] The Tribunal thus considers that the Applicant is due a payment of £77.65 + £25= £102.65 less the amount of-£60 already paid to the Applicant, leaving the sum of £42.65 due to the Applicant by the Respondents.

Decision

The Tribunal grants an order against the Respondents for payment of the sum of £42.65 to 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.

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Petra Hennig-McFatridge

	3.2.2020
Legal Member/Chair	**Date**