



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 1988**

**Chamber Ref: FTS/HPC/CV/19/2114**

**Re: Property at 26 Dunglass Avenue, West Mains, East Kilbride, G74 4EG (“the  
Property”)**

**Parties:**

**Mrs Maria Thorburn, 68 Craighill Drive, Clarkston, Glasgow, G76 7TD (“the  
Applicant”)**

**Mr Dominic Tyrell, Spey Bay, Golf View, Nerston, East Kilbride, G74 4GS (“the  
Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member)**

**Decision**

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

**Background**

1. By application received on 8<sup>th</sup> July 2019 the applicant sought an award against the respondent of £99 in respect of his failure to return a Gtech Cordless Power Sweeper. The present application was conjoined with application reference FTS/HPC/PR/19/1872 which concerned the respondent’s failure to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011.
2. The applicant lodged with the application a copy of the tenancy agreement. The respondent submitted a written response on 4<sup>th</sup> September 2019. Parties

also lodged WhatsApp messages between the parties spanning the period from 16<sup>th</sup> February 2019 to 15<sup>th</sup> June 2019.

### **CASE MANAGEMENT DISCUSSION (“CMD”)**

3. A CMD took place on 28<sup>th</sup> October 2019. Both parties attended.
4. Parties confirmed that they had entered into a lease in respect of the property with a commencement date of 14<sup>th</sup> January 2019. The lease was for a term of three months and terminated on 14<sup>th</sup> April 2019.
5. Parties confirmed that the copy WhatsApp messages which were before the Tribunal were genuine.
6. The applicant advised that immediately prior to the lease terminating she had been seriously ill in hospital. As she was unwell, her two sons had arranged to remove her personal possession from the property. They had omitted to remove the applicant's Gtech sweeper which she estimated would cost £99 to replace.
7. The applicant advised the Tribunal that on 6<sup>th</sup> May 2019 she contacted the respondent to request the return of the sweeper.
8. The respondent advised the Tribunal that he owns a number of rented properties. The property had been cleaned by professional cleaners following the applicant's removal. The respondent had not been personally involved in the cleaning of the property.
9. The applicant and respondent had sent a number of WhatsApp messages to each other regarding the deposit and the sweeper. On 9<sup>th</sup> June 2019 the respondent advised the applicant that he had located the sweeper and that the cleaners had placed it in the bin shed near the property. The parties then had an exchange of messages regarding the return of the sweeper.
10. The respondent advised the Tribunal that he had tried to agree with the applicant that the sweeper be returned either by meeting the respondent at a neutral venue or dropping the sweeper off at her home.
11. The applicant advised the Tribunal that she had insisted on a neutral venue. She advised that by this time the relationship between her and the respondent was poor as she felt he had not dealt with her requests regarding the sweeper well.

12. The Tribunal noted that the applicant did not appear to have responded to all of the respondent's suggestions regarding return of the sweeper. The applicant accepted that she appeared not to have done so.
13. The respondent confirmed that he had left the door open for the applicant to get in touch regarding return of the sweeper in his message dated 15<sup>th</sup> June 2019. She had not done so and after a period of two months he had disposed of the sweeper.
14. The applicant had advised the respondent by WhatsApp message dated 15<sup>th</sup> June 2019 that as he had delayed in returning the sweeper she would be raising court action immediately.
15. The applicant advised that that the sweeper was approximately 13months old.
16. The respondent advised that the sweeper was a number of years old.
17. The applicant advised the Tribunal that the sweeper was rarely used.

#### **FINDINGS IN FACT**

18. Parties entered into a tenancy agreement in respect of the property. The commencement date was 14<sup>th</sup> January 2019. The term of the lease was for 3 months to 14<sup>th</sup> April 2019.
19. The tenancy terminated on 14<sup>th</sup> April 2019.
20. The applicant's sons removed her personal possessions from the tenancy. They left a Gtech Cordless Power Sweeper which belonged to the applicant in the property.
21. The applicant requested that the respondent return the sweeper on or around 6<sup>th</sup> May 2019.
22. The respondent attempted to locate the sweeper and advised the applicant that he had located it on 10<sup>th</sup> June 2019.
23. The respondent made a number of reasonable suggestions for returning the sweeper to the applicant over the course of 14<sup>th</sup> and 15<sup>th</sup> June 2019.
24. The respondent retained the sweeper for a further two months from 15<sup>th</sup> June 2019 during which the applicant made no further contact with the respondent.
25. The respondent subsequently disposed of the sweeper.

## **REASONS FOR THE DECISION**

26. The Tribunal took into account the WhatsApp messages between the parties and their oral representations at the CMD. It was clear from the WhatsApp messages that the respondent had given the applicant a number of options for the return of the sweeper. In particular the respondent had offered to leave the sweeper in the bin shed at the property for uplift, to meet the applicant at a neutral place and to drop the sweeper off at the applicant's home. The Tribunal accepted the respondent's evidence that he had tried to be helpful and had hoped to resolve the issue amicably. The Tribunal found that the respondent had behaved reasonably in the circumstances.
27. The Tribunal noted that the applicant was unhappy with the respondent's conduct at the time the tenancy ended and in particular the respondent's position that she should be liable for certain repairs within the tenancy to be carried out. The Tribunal noted that the applicant had been unwell at the time the tenancy had ended and felt that the respondent had not been sympathetic to her circumstances.
28. The Tribunal noted that the applicant had failed to respond in full to the respondent's proposal regarding the return of the sweeper. The Tribunal noted that the applicant had threatened to raise court action immediately when the respondent had been seeking to engage with her to return the item.
29. The Tribunal noted that the respondent had retained the item for a further two months from 15<sup>th</sup> June 2019 and the applicant had made no further attempts to obtain the item
30. The Tribunal noted that it was the applicant's responsibility to remove her personal items from the tenancy.
31. In the foregoing circumstances the Tribunal did not consider that the respondent had any liability to reimburse the applicant for the cost of replacing the sweeper.

## **DECISION**

The Tribunal determined to dismiss the application.

## 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.

M Kelly

Legal Member/Chair

Date

26<sup>th</sup> October 2019