



**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/22/0599**

**Re: Property at No 4 Fingask Farm Cottage, Rhynd, Perthshire, PH2 8QF (“the Property”)**

**Parties:**

**Mrs Lynne Bruce, Sean Bruce, 13 Rosslyn Avenue, Kirkcaldy, KY1 2BL (“the Applicant”)**

**Ms Susan Moncreiff ta Kinmonth Estate, Managed Estates, Unit 8 Touch Business Centre, Touch Road, Stirling, FK8 3AQ (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be made.**

**Background**

On 2<sup>nd</sup> March 2022 the Applicants lodged an Application with the Tribunal under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber Rules of Procedure) 2017 (“The Rules”), seeking an order for payment of a sum retained from the deposit at the end of their tenancy.

There was an extended exchange of correspondence with the Tribunal regarding the identity of the Respondent and about obtaining an address for them.

There was also correspondence regarding use of the adjudication process provided by the tenancy deposit scheme.

The Applicants lodged a copy of the tenancy agreement and a copy of the Tenancy Check Out form, which was dated 8<sup>th</sup> November 2021 and signed by the First Named Applicant and by Phil Robinson, Letting Agent. The Check Out form contains a paragraph which states;

“Deposit Proposal Agreed: 100% subject to remaining items being removed 14/11/2021”.

The documentation produced from the tenancy deposit scheme shows that the Applicants proposed retaining one half of the deposit. It further shows that the Applicants responded to say that they wished the First-tier Tribunal to deal with matters.

The Application was accepted by the Tribunal on 25<sup>th</sup> October 2022.

The Application was served on the Respondents by Sheriff Officers on 9<sup>th</sup> December 2022.

On 23<sup>rd</sup> December 2022 the Respondent lodged Written Submissions. Mr Robinson explained as follows:

*“I had met with Mrs Bruce on the evening of the 8th November 2021 following the termination of the tenancy, in order to undertake an end of tenancy inspection of the property. During this inspection I found that the kitchen cooker extractor hood, present at the start of the tenancy, had been removed and disposed of, without any prior notice to myself or the Landlord. Mrs Bruce explained that the old extractor hood had been faulty and that they had removed it and disposed of it a while ago. I explained that had I have been notified that the extractor hood was suspected to be faulty, I would have arranged the safe repair or replacement of the hood at the cost of the Landlord. Mrs Bruce presented a replacement cooker hood which she had purchased but which had not been installed. On the understanding that the replacement extractor hood was fit for purpose and as a gesture of goodwill I offered to accept the replacement hood and incur the cost of its installation, in order to remedy this issue. Unfortunately when the fitter visited the property I was informed that the hood was not the correct model to align with the vent and could not be installed. I requested a quote for the replacement of the extractor hood which came to £240.00 Inc. VAT. I informed Mrs Bruce of this, alongside concerns relating to condensation and submitted a proposal to Safe Deposit Scotland to retain 50% of the deposit to cover this cost. Mrs Bruce did not accept this position, though, as identified in your letter to Mrs Bruce of the 11th April 2022, she did not engage with the adjudication provision with SDS. Mrs Bruce claims that she was not made aware of this by SDS, and whilst I cannot comment on what information she may have received from SDS, I explained that this process was the next step in resolving a dispute and it is also noted within the Prescribed Information provided to the tenant at the start of the tenancy that “If the Tenant disagrees with the amount, the scheme administrator will provide a dispute resolution mechanism.” In failing to productively engage with alternative dispute resolution, I had understood the matter to be resolved, but it appears Mrs Bruce has now prolonged this process.*

**Condensation**

*Whilst I note Mrs Bruce has made repeated reference to “damp” within the property, I believe I have previously addressed this complaint and accepted my failure to address this at the time of the end of tenancy inspection. As a result of this I explained that I would restrict the claim to the costs associated with the replacement of the extractor hood. Whilst I maintain my position on the condensation, I do not believe it is relevant to the case unless advised otherwise.*

**Tenancy check-out form**

*I note Mrs Bruce makes reference to the proposal for 100% of the tenancy deposit to be returned. Whilst I accept that this proposal was agreed in principle, it was subject to all agreed items being resolved as discussed. When this was not possible, Mrs Bruce was informed and was not prepared to accept this position. In this situation we would expect a tenant to engage with alternative dispute resolution via SDS.*

**Conclusion**

*In my opinion I believe that the retention of 50% of the deposit is more than fair under the circumstances. By choosing not to engage with SDS Mr & Mrs Bruce have drawn out this process and incurred costs to the Landlord far in excess of this figure, intentionally or otherwise, whilst adding further strain on to the HPC First Tier tribunal system. I have attached the full email chain correspondence with Mrs Bruce in connection with the disputed tenancy deposit for your consideration. I hope I have provided you with all of the information required to provide a balanced and rational view on this case, but if you do require any further information on any element, please do not hesitate in contacting me”*

Mr Robinson also lodged an email trail as referred to in his submission.

The Applicants indicated that they would be on holiday on the date set for the Case Management Discussion and were happy for it to proceed in their absence.

**Case Management Discussion**

The Case Management Discussion (“CMD”) took place by teleconference. The Applicants were not present. The Respondent was represented by Phil Robinson, Letting Agent of Managed Estates.

The Chairperson introduced everyone and explained the purposes of a CMD in terms of Rule 17 of the Rules.

Mr Robinson reiterated what he had said in his Written Submission about the cost of a replacement extractor hood and confirmed this is why half of the deposit had been retained.

The Chairperson referred Mr Robinson to the Check Out form. He confirmed that he had signed it. He confirmed, when asked, that it made no mention of the potential issue that the extractor hood would not fit. He appreciated he should have checked it

first. He confirmed that he had not lodged any vouching in relation to the replacement cost. He said he did not know that he had to, he had asked the Tribunal by email if anything else was required but had not received a reply. He said that the cost was in excess of the amount retained, but he had considered 50% of the deposit to be a reasonable figure.

### **Findings In Fact**

1. The parties entered in to a tenancy for rental of the property;
2. The Applicants paid a deposit of £475;
3. The tenancy came to an end on 8<sup>th</sup> November 2022;
4. Mr Robinson met the Applicants at the property on 8<sup>th</sup> November 2022 to carry out Check Out procedures;
5. The Tenancy Check Out form was signed by Mr Robinson and the First Named Applicant;
6. Said form contained a clause saying “Deposit Proposal Agreed: 100% subject to remaining items being removed 14/11/2021”
7. The remaining items referred to were removed within the agreed timescale;
8. The Respondent retained 50% of the deposit;
9. The Applicants did not engage in the adjudication process provided by the tenancy deposit scheme;
10. The Tribunal has jurisdiction.

### **Reasons For Decision**

The Tribunal was satisfied that sufficient information had been presented to allow it to make a decision.

Regulation 34(4) of the Tenancy Deposit Schemes (Scotland) Regulations 2011 states:

*“Use of the dispute resolution mechanism must not be compulsory, but the tenancy deposit scheme must require a landlord who has submitted a deposit to it to use the dispute resolution mechanism in any case where the tenant requests a referral.”*

A tenant is therefore not obliged to use the dispute resolution mechanism and the Tribunal has jurisdiction to deal with the claim.

It was clear from the Check Out form that agreement had been reached between the parties. It was a conditional agreement, but the condition had been satisfied. There was no condition about whether or not the extractor hood had to fit. This should have been checked prior to the Check Out form being completed.

The Tribunal held that there was a contract between the parties, with Mr Robinson acting as the Respondent’s agent, for return of the full 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.**

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**Legal Member/Chair**

23 January 2023

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**Date**