



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/20/1743

Re: Property at 1/1, 46 Kempock Street, Gourrock, PA19 1ND (“the Property”)

Parties:

Mr Simon Boparai, 1 Mansion Avenue, Port Glasgow, PA14 6QP (“the Applicant”)

Miss Charlotte Mills, 22B Ladybarn Street, Greenock, PA15 2HQ (“the Respondent”)

Tribunal Members:

Ms Helen Forbes (Legal Member) and Mr Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £3737.17 should be granted in favour of the Applicant with interest at the rate of 3% per annum above the Bank of England base rate.

Background

1. This is an application dated 7th August 2020, made in terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”). The Applicant was seeking an order for payment in the sum of £3000 in respect of rent arrears pertaining to the Property, which was the subject of a tenancy agreement between the parties. The Applicant lodged a partial copy of the tenancy agreement which commenced on 18th September 2019, at a monthly rent of £500, and a rent statement.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 12th November 2020.
3. By email dated 3rd December 2020, the Applicant applied to amend his application to include the sum of £2280 allegedly due in respect of repairs and

cleaning required to the Property at the end of the tenancy. The Applicant lodged a quotation in the sum of £1980 from Home Lettings Scotland Ltd., pertaining to replacement items required and repair/decorating costs, and an invoice from Home Lettings Scotland Ltd. for £300 for a deep clean of the Property and removal of left items. The Applicant also lodged photographs in support of his application. By email dated 9th December 2020, the Applicant lodged information from Home Lettings Scotland Ltd. in relation to the alleged damage to the Property.

4. A CMD took place by telephone conference on 14th December 2020.
5. By email dated 22nd January 2021, the Respondent's representative lodged a written submission and productions. The Respondent accepted the level of rent arrears of £3000, however, she argued that some of the rent was not lawfully due as she was due an abatement in respect of repairing issues within the Property. Issues with the windows and thermostat were present throughout the duration of the tenancy and she was claiming an abatement of rent equal to 2/6 of the rent, amounting to a total of £2083.33. Further issues with mould, unsafe guttering, balcony flooding and an unsafe balcony were notified to the Applicant on 24th July 2020. No response had been received from the Applicant and the Respondent was claiming a further abatement amounting to 1/6 of the rent for a period of 57 days amounting to a total of £156.16. Further submissions were made in regard to landlord registration and whether the Applicant was a registered landlord.
6. A CMD took place by telephone conference on 5th February 2021. Due to the non-appearance of the Applicant, as notification had not been received by his agent, the CMD was adjourned to 2nd March 2021, with an evidential hearing set down for 16th March 2021.
7. By letter dated 23rd February 2021, the Applicant's agent informed the Tribunal that he was no longer acting for the Applicant.
8. A CMD took place by telephone conference on 2nd March 2021. The Respondent's agent, Mr Christman said the Respondent accepted liability for £760.51 of rent arrears, and a sum of £50 in relation to cleaning the freezer and removal of items from the Property.
9. By email dated 8th March 2021, the Respondent's representative lodged further submissions and productions.
10. By email dated 9th March 2021, the Applicant lodged further submissions and productions.

The Hearing

11. A hearing took place by telephone conference on 16th March 2021. Both parties were in attendance. The Respondent was represented by Mr Christman, Solicitor.

Preliminary Issues

12. Mr Christman said the Respondent was no longer insisting on the abatement of £2083.33 in respect of the windows and thermostat. The Respondent would accept liability for £50 in respect of cleaning/removal costs, £100 in respect of repair of the bath, and £193.33 in respect of replacement of one carpet.
13. The Tribunal had previously raised an issue as to whether the matter of landlord registration was relevant. Although not persuaded that this was the case, the Tribunal agreed to allow evidence to be led, as the witness, Mr Lamb, was in attendance and waiting to give evidence.

Applicant's evidence

Landlord Registration

Witness – Mr James Lamb, Solicitor

14. Mr Lamb spoke to the issue of landlord registration, stating that there had been issues between the Applicant and the local authority representative that had led to the Applicant being unable to use the online system for renewal of his landlord registration. He had originally registered as a landlord in 2012 when registration began. Mr Lamb had mediated between the Applicant and the local authority and an application was now in process, but it had been delayed due to the Covid-19 pandemic and retirement of local authority staff. The renewal application is still live and Mr Lamb is awaiting hearing further in this regard. Some of the Applicant's properties have now changed hands so the information provided to the local authority will require to be updated.
15. There was no cross-examination of the witness. Mr Christman said the matter had been fully explained and the explanation was accepted.

Abatement of £156.16

16. The Applicant said that minor repair issues had been grossly exaggerated or fabricated by the Respondent. There had never been mould in the flat. The guttering was damaged but was not unsafe. There was no evidence to support the Respondent's claim. There had been no flooding on the balcony. There was a small amount of water in one corner. The Applicant referred the Tribunal to his production photograph 12 which showed a broken cast-iron drain pipe. He said the terminology used was ridiculous. The pipe was on the boundary of the neighbouring property. There would only be a small amount of water in the corner of the balcony if there was heavy rain.
17. The Applicant said repair issues had been reported to him in the last week of June 2020. He attended the following day. Part of the downpipe had come off. The main part was still secure and intact. The description did not match the reality. He sent a joiner out to attend to the windows and the downpipe on 8th

July 2020. The Respondent said she was happy with things as they were. The Applicant persuaded the Respondent to allow the joiner to go back and fit hooks to the windows to assist opening. Two weeks later, the Applicant received the solicitor's letter of 24th July 2020. It was his position that the Respondent did not want matters resolved. She was in rent arrears by then and she wanted leverage to avoid paying her rent. The Applicant referred the Tribunal to production 19 which was a screenshot of text messages between the parties on 8th July 2020 regarding the joiner attending at the Property. He had arranged repairs as soon as he was notified. They were not serious issues and, considering the Covid restrictions, they were carried out in a reasonable timeframe.

Cleaning costs

18. The Applicant said all the carpets had orange stains. There were also burns and candle wax on the carpets. They had to be deep-cleaned with two lots of cleaner due to the amount of dirt. In terms of clause 25 of the lease, the Respondent was required to leave the Property as she found it.
19. It was the Applicant's position that the costs for cleaning were reasonable. Even if part of the Property looked clean, if other parts were filthy, the whole place needed cleaned. Responding to questions from the Tribunal regarding a claim he had previously made at a CMD that the deep clean of the Property was carried out due to the Covid-19 pandemic, the Applicant said that was an additional reason for the deep clean. There had been a dog in the Property several times and people were regularly in the Property during lockdown. Asked if he had received comparative quotes for the cleaning, the Applicant said all quotes received were much the same. The cost was not excessive. He could not say how many hours had been spent cleaning the Property, but he imagined it was the better part of a day. There was nail varnish on the bath and the cleaner had to source a special removing solution.

Damage to the Property/Re-decoration

20. Responding to questions from the Tribunal, the Applicant said there was no inventory or condition report at the start of the lease as the Property was unfurnished, although the previous tenant had left some belongings by agreement. The Property had been refurbished to a high standard in 2019, prior to the previous tenancy. The kitchen had not been refurbished at that time, but it was 'top of the range'.
21. The walls in the Property were white at the start of the tenancy. In terms of the tenancy agreement, written permission was required to decorate. The Applicant said he would not refuse a request to redecorate provided any proposal was tasteful and to his liking. Responding to questions from the Tribunal, the Applicant said the Respondent had asked if she could decorate and he had agreed provided the colour scheme was tasteful and approved by him. He had not been asked for, or given, permission to paint the walls blue.

22. The Applicant referred the Tribunal to photograph 8 that showed holes in the wall where pictures had been put up. He said it would not be possible to fill and sand the holes without painting the whole wall. Responding to questions from the Tribunal, the Applicant said that other tenants had hung pictures, but not to the extent of the Respondent. He would make allowances for the odd nail hole, but this was excessive. The previous tenant had put up multiple pictures and filled the holes before they left.
23. The Applicant said the Respondent left without mentioning any of the damage. As a consequence of the damage, he had to let the Property at a reduced rent of £400 per month. The lease was clear on the tenant's responsibilities to leave the place as she found it. He would be reasonable about acceptable wear and tear. This was on a different scale to what he was used to.
24. The Applicant's position was that the thermostat was working at the start of the tenancy. He referred the Tribunal to the Gas Safety Record for the Property dated 17th December 2019. There was no mention on it of the thermostat not working. Had that been the case, the gas engineer would have included that on the Record. The thermostat was linked to two other parts on the boiler. The boiler could be controlled manually without the thermostat, but it could not be programmed. Responding to questions from the Tribunal, the Applicant said there had been a discussion about the thermostat at the start of the tenancy. It was working and it was kept in the kitchen drawer. The Applicant told the Respondent how to use it. He found the thermostat covered in paint at the end of the tenancy. It was in the boiler cupboard, on top of the boiler, and there was evidence of paint spillage in the cupboard. The thermostat was no longer able to be used as the buttons were stuck with paint and the paint had soaked into the device. The current tenant is controlling the boiler manually. The Applicant said the device costs £60 and £40 for fitting. This is not the same device, which would be over £100.
25. The Applicant said the bath had two holes – one on the bottom and one on the edge, as indicated in photographs lodged by the Applicant. It was a D-shaped bath, it was expensive and only six months old at the start of the tenancy. The Respondent had filled the hole on the bottom of the bath with Polyfilla and plaster. The sink had a grey stain that may have come from a candle. It could not be cleaned. There was an attached vanity unit, so the sink could not be replaced by itself. The Applicant was claiming £400 for the bath, £200 for the sink, and £200 for fitting.

Respondent's Evidence

26. Mr Christman said the Respondent's evidence was as set out in the written representations, but he made the following comments:

- (i) The Respondent had not been given a full copy of the tenancy agreement and had only seen it when it was lodged at a late stage by the Applicant.
- (ii) There was no legal basis for including a cost in relation to cleaning due to coronavirus.
- (iii) The Gas Safety Record was not determinative of whether the thermostat was operative as it was not mentioned on the Record.
- (iv) The Respondent had asked a witness of Home Lettings Scotland Ltd. to attend at the hearing but they were unavailable. The evidence lodged from this company should be treated with limited weight. The best evidence would have been to have had a witness from the company, able to be cross-examined.
- (v) The Applicant seemed to accept that repairs had been carried out to the bath, which was contradictory to his position.

Witness – Mr Stephen Malcolm Mills

27. Mr Mills is the father of the Respondent. He said he was with the Respondent when she initially visited the Property before taking on the tenancy in or around September 2019. The Respondent had seen the Property advertised. There was a general discussion with the Applicant about the Respondent making the place more homely. Some of the paintwork was not up to scratch and the windows were in disrepair. The Respondent asked the Applicant if it was all right to paint in her own colours. He said as long as the decorating was reasonable, he did not mind. There was a similar conversation about hanging pictures and the Applicant said that was acceptable.

28. Mr Mills said the thermostat was discussed. The batteries were changed but it did not work. Mr Mills had said that he was familiar with boilers and it could be operated manually.

29. Mr Mills said he was at the Property at the end of the tenancy, helping the Respondent to clean. The Respondent cleaned the carpets and removed emulsion from the parquet floor. Mr Mills cleaned the kitchen. It was a general tidy up and the place was not unclean. It was left in as good condition as they could leave it.

Cross-examination of witness

30. Mr Mills accepted that the freezer had not been cleaned and said this was an oversight. Mr Mills said he was not aware of any discussion after the tenancy commenced regarding colour schemes for decorating, and said that 'reasonable' is a very subjective term. Responding to questions from the Applicant as to whether the thermostat discussion was around the

Respondent not using it, rather than the thermostat not working, Mr Mills said the thermostat lit up after the batteries were inserted but it did not communicate with the boiler. When asked if anything else was discussed at that meeting, Mr Mills said the state of disrepair of the balcony doors was discussed. He said the lock did not work, light could be seen through the gap in the doors and the wood was rotten. There was evidence of damp staining in the front bedroom, which was attributed to a leak. Mr Mills said the Applicant said it would be sorted out, and Mr Mills and the Respondent thought repairs were imminent. Mr Mills said the issues worsened as the tenancy progressed. When asked why he had let his daughter move in if the condition was not good, Mr Mills said the decision was based on the Applicant saying he would carry out work. The Applicant had been taken at his word.

31. There was no re-examination of the witness. Responding to questions from the Tribunal as to how the condition of the Property worsened, the witness said some of the windows could not be opened in the summer, and the water mark turned to mould. The Respondent had to clean it off with bleach and paint over it. The Applicant had said the balcony, windows and staining issue were in hand, and other owners were involved.

Witness – Charlotte Mills – the Respondent

32. The Respondent said there were problems opening the windows in the Property. The Applicant sent someone round to put hooks on the windows, but they were too small and had to have cords inserted before they could be used. The stain in the front bedroom turned to mould. The Applicant had said there had been a leak from the upstairs property.
33. A piece of pipe fell from the balcony, injuring her hand and scaring her. The Tribunal was referred to a photograph of her scratched hand lodged on behalf of the Respondent. The Applicant said to stay off the balcony as it was not safe. One of the reasons for taking the flat was the balcony. The Respondent said the Applicant did not believe her that she had been injured, and he did not care.
34. The Respondent said she reported repairing issues to the Applicant several times verbally and by WhatsApp. The Applicant had attempted to fix the window problems by applying yellow expanding material that looked bad and did not fix the problem. The Respondent said she told the Applicant about the mould problem and he did nothing. The broken pipe was rusted and had duct tape on it. No repairs were carried out to the balcony other than foam applied to the doors, but they still whistled.
35. The Respondent said she damaged the bath by hanging a mirror from a wire in the bathroom. This would not have happened if the Applicant had put up a bathroom mirror as he had promised. The sink was not sealed and could be pulled away from the wall. She did not burn a candle on the sink, but the mark may have come from the ink on a soap dispenser label or from face mask packaging. The Respondent said there were two orange stains on the carpet,

about the size of a penny. She used professional products to clean the carpets.

36. The Respondent said she visited the Property a day or two before the tenancy commenced, with her parents. She took the Property on the basis that the issues would be fixed. It was her pride and joy and she looked after it as if it was her own. The Applicant did not say not to put pictures up. She told him she had a big picture for the front room and he said that was fine. The Applicant said it was fine to paint the walls and did not ask her to contact him for permission. The thermostat did not work and it was kept in the boiler cupboard. The Respondent operated the boiler manually, even having to put it on when she was having a shower. She cleaned the Property thoroughly at the end of the tenancy. It took a couple of days. She works as a cleaner and takes pride in her work and admitted that she had forgotten to clean the fridge freezer. Otherwise, the Property was immaculate when she left, as shown in the Respondent's productions marked pages 11 to 23.

Cross-examination

37. When questioned, the Respondent reiterated that the Property was immaculate at the end of the tenancy, with the exception of the fridge freezer.

38. The Respondent said there was verbal agreement that she could decorate. When asked if she had permission to paint parts of the Property blue, she said no. She had assumed after the discussion prior to moving in that it was acceptable.

39. The Respondent said the carpets were left in an acceptable condition, with only a few marks, as indicated in the photographs lodged on her behalf. She said her father repaired the hole in the bath. She said she had reported problems prior to July 2020 verbally and on WhatsApp as the Applicant did not answer telephone calls. The Applicant had a threatening and aggressive manner in his messages.

40. Responding to questions from the Applicant, the Respondent said the downpipe was located to the left of the window. It fell on her on the Property balcony. It was heavy and rusty and it had come apart. It happened during heavy wind and rain. When challenged as to why she was on the balcony in that weather, she said she was under cover, and had gone out to vape. The pipe hit her shoulder then her left hand. Challenged as to how the pipe could have hit her as described, she said she had her back to the sea at the time.

41. Asked why she referred to the balcony as dangerous, the Respondent said the Applicant told her that, as did a representative from Environmental Health. The Respondent referred to the 'burgh surveyor' stating that it looked unsafe. The Respondent accepted it would be reasonable not to use the balcony if told it was unsafe, and that was what she had done. The Respondent said,

when questioned as to the identity of the local authority person that had attended, that her father had arranged this.

42. The Respondent said there was a puddle of water on the balcony and the pipe would flood onto the balcony when it was raining. The floor was eroded. Asked how her enjoyment of the balcony was impaired, the Respondent said it was an eyesore, and referred to the falling pipe. Her feet also got wet when it rained. There was a large puddle of water. Asked how that could be the case, when the balcony was at an angle running away from the Property, the Respondent said the wind would push the water across.
43. The Respondent said the reason she had told the joiner everything was all right was because her friend had fixed some of the problems. She agreed it was reasonable that the Applicant arranged someone to come out within a week of her reporting issues at the end of June 2020. The joiner applied hooks and foam on the balcony windows. She said she had previously reported repairs required, such as the pipe, and the Applicant had not dealt with them.
44. The Respondent said she had signed the lease in the Applicant's van, but it was not the full lease and she had not seen that until it was lodged as part of this application. She denied that a copy of the full lease had been emailed to her.
45. The Respondent denied leaving rubbish in a common area, as shown in the Applicant's photograph 20. She said she had not left personal documentation in the Property and wondered if the letter shown was delivered to the Property after she left.
46. The Respondent said she had reported mould problems to the Applicant by telephone on a couple of occasions. The problem began with a damp stain and turned to mould. She cleaned and painted over it.
47. Asked why she had turned the boiler off completely, rather than leaving the hot water function on, the Respondent said she did not understand how to work the boiler.
48. Responding to questions from the Tribunal, the witness said the mirror was a large floral mirror that was too heavy for the place in which she hung it. A door banged and the mirror fell into the bath.
49. Responding to questions from the Tribunal as to why she accepted that one carpet required replacement, she said that there were make-up stains on the living room carpet. There were no marks on the bedroom carpets. The spare bedroom was hardly used. The Respondent said the paint spillage on the thermostat must have come from paint pots she had stored in the cupboard, although she was not aware of spillage.

Further discussion

50. Responding to questions from the Tribunal, the Applicant said there had been an issue with the balcony since 2014. A structural engineer had looked at it and said the render on the underside had come off. If it had been unsafe, it would have been shut down. The Applicant said he told the Respondent not to use it if she was not confident using it.
51. Responding to questions from the Tribunal, the Respondent said she used the balcony until she was told it was unsafe, which was a period of 5 to 6 months before the end of the tenancy.

Summing up for Respondent

52. Mr Christman referred to his written submissions and the evidence given. He believed Environmental Health does have a role in repairing issues.
53. Mr Christman said the evidence regarding items left in the common area was not relevant as no claim had been made in that regard.
54. Asked whether the Tribunal could consider a question as to whether or not the repairing standard had been met, given that there was a specific statutory remedy in the Housing (Scotland) Act 2006 for repairing standard issues, Mr Christman said the Respondent had lodged a repairing standard application but this could not be continued after she left the Property. The repairing standard forms part of the tenancy agreement and it was Mr Christman's position that a finding could be made by the Tribunal that the repairing standard was not met.
55. Mr Christman said the quotes provided by the Applicant were not sufficient evidence of loss. There were no invoices or comparative quotes provided, and no witness evidence. The Tribunal should require a sufficient standard of evidence for the claim.

Summing up by the Applicant

56. The Applicant referred the Tribunal to his photographs that showed marks on all the carpets. He said that two out of the three carpets had burns. There was a paint mark on a carpet. There was a wax mark on a carpet, although this was not photographed.
57. Buildings Standards would have been involved had the balcony not been safe, in terms of the Housing (Scotland) Act 2006 which covered structural stability. The Respondent spoke to the wrong person and wrong department. The person they spoke to was not qualified to say the balcony was unsafe.
58. The Applicant said he had tried to keep all messages in writing. There was no evidence of reports of issues until the Respondent was four months in arrears,

then the issues started. The Respondent withheld that the Applicant had sent a joiner round. The fact that she had withdrawn her claim for the larger abatement sum told its own story – the claim was withdrawn as soon as they received the Applicant’s second submission. The building is 120 years old. Sometimes slates come off. There was no mould and he was never notified of this – it is a fabrication. The story of the pipe falling on the balcony had been changed. The pipe may have broken, but it was not as described. The pipe was three and a half feet long. It could not have fallen on the balcony. It looked as if it was pulled off the wall. It was a perfect fit with the piece of pipe that was left. Everything was contrived as a reason not to pay her rent.

59. The lease was sent to the Respondent’s email address. The Respondent confirmed receipt by text message.

60. The Applicant said he is entitled to restitution.

Findings in Fact

61.

- (i) The parties entered into a private residential tenancy agreement commencing on 16th September 2019 at a monthly rent of £500.
- (ii) The tenancy ended on 3rd October 2020. At that date, there were rent arrears outstanding of £3000.
- (iii) The damp stain on the ceiling of the front bedroom at the commencement of the tenancy turned to mould as the tenancy progressed.
- (iv) The windows were in a poor state of repair at the start of the tenancy and some of the windows could not be opened.
- (v) The balcony was in a poor state of repair, with water ingress during wet weather from a broken downpipe situated adjacent to the balcony.
- (vi) A broken downpipe on or adjacent to the balcony fell on the Respondent, scratching her hand.
- (vii) The Respondent was informed by a representative of the local authority that the balcony was unsafe and she should not use it.
- (viii) The Applicant told the Respondent not to use the balcony if she was not comfortable using it
- (ix) The Respondent did not have full enjoyment of the balcony throughout her tenancy.

- (x) The Applicant informed the Respondent prior to the commencement of the tenancy that, as long as any decoration carried out was reasonable, she was allowed to decorate. The Applicant did not inform the Respondent that written permission was required before decorating, or that she required his permission on a colour scheme.
- (xi) The Applicant told the Respondent she could hang pictures in the Property.
- (xii) The Respondent caused damage to the bath in the Property by failing to fix her mirror safely on the wall.
- (xiii) The Respondent was responsible for causing a stain on the sink by unknown means.
- (xiv) The Respondent caused damage to a thermostat within the Property.
- (xv) The Respondent cleaned the Property to a satisfactory standard at the end of the tenancy, with the exception of the carpets and fridge freezer.
- (xvi) With the exception of the carpets and the fridge freezer, the Property did not require a deep clean at the end of the tenancy.
- (xvii) The nail marks on the wall can be attributed to fair wear and tear.
- (xviii) The mark on the sink can be attributed to fair wear and tear.
- (xix) The marks on the bedroom carpets can be attributed to fair wear and tear.
- (xx) The Applicant failed to respond to a request for action in relation to required repairs following a letter sent on behalf of the Respondent dated 24th July 2020.

Reasons for Decision

62. It was a matter of agreement that the sum of £2843.84 was outstanding in rent arrears, with the remaining £156.16 the subject of disagreement.

63. The Tribunal found that the Respondent was entitled to a rent abatement in the sum of £156.16 as claimed. Repairing issues were notified to the Applicant on 24th July 2020 and he did not respond or attend to those issues thereafter. In a situation where a tenant does not have full enjoyment of the subjects, it follows that rent is not lawfully due in respect of the parts of the subjects of which the tenant does not have full enjoyment. The Respondent did not have full enjoyment of the balcony at all times throughout the tenancy due to issues of disrepair. The Tribunal did not give any weight to the Applicant's suggestion that the Respondent had consulted the wrong person or department within the local authority. The Respondent ought not to have

had to contact the local authority at all, and would not have had to do so if the balcony had been in a tenable condition. The Tribunal accepted the evidence of Mr Mills that the balcony was not in good condition at the start of the tenancy and that it was expected that the Applicant would carry out works. The Tribunal accepted the evidence of the Respondent that a broken pipe fell on her shoulder and hand, and this was not attended to by the Applicant, and that the balcony was subject to water ingress.

64. The Tribunal accepted the evidence of Mr Mills and the Respondent that there was an issue with mould following a historical leak from another property, and that the Applicant did not address this.

65. The Tribunal did not make any findings as to whether the repairing standard was met during the tenancy. The Tribunal considered that the Applicant had breached his common law obligations of habitability and tenability.

66. The Tribunal found that the cleaning costs claimed were excessive. The Tribunal had regard to the photographs lodged by the Respondent from the end of the tenancy, and the evidence of Mr Mills and the Respondent. The Property did not require a deep clean, and the Tribunal did not accept that the Respondent ought to be liable for cleaning carried out due to the Covid-19 pandemic. The Tribunal accepted the evidence of the Applicant that the bath and the carpets required extra attention. The Tribunal found that the Respondent is liable for £150, a half-share of the cost of cleaning and removing items.

67. The Tribunal considered that the Applicant suffered loss as a result of the Respondent's actions in relation to the bath and the thermostat. In terms of clause 25 of the tenancy agreement, the Respondent undertook to repair or replace contents which are destroyed or damaged. The bath was damaged to a significant extent by the Respondent failing to secure a wall mirror that then fell and damaged the bath in two places. The Tribunal considered that the Respondent should be liable for the full cost of replacement of the bath.

68. In respect of the thermostat, the Tribunal accepted the evidence of Mr Mills and the Respondent that it was not in working order at the start of the tenancy. There was insufficient evidence before the Tribunal to support the Applicant's argument that the gas engineer would have tested the thermostat at the time of compiling the safety record, and that it must have worked at that time. The Tribunal took the view that, although it was not in working order at the start of the tenancy, the Respondent should have notified the Applicant again that it was not working. It may be the case that the thermostat could have been fixed during the tenancy or thereafter, but that opportunity was lost due to the fault of the Respondent in allowing it to become contaminated with spilled paint. In all the circumstances, the Tribunal decided the Respondent should be liable for one half share of replacing the thermostat.

69. The Tribunal considered the submission on behalf of the Respondent that the Applicant had provided insufficient evidence of loss by providing only one

quote. The Tribunal agreed that it would have been preferable to have had comparative quotes or further information as to how the costs were reached, however, the Tribunal noted that the Respondent accepted the quotation in respect of replacement carpets and was willing to accept liability in the sum of £193.33 for one carpet. There was no explanation given by the Respondent's representative as to why that quote was accepted but the other quotes were not acceptable. The Tribunal decided to accept the quotes provided by an established letting agent, in respect of the bath and the thermostat. The Tribunal found that the Respondent is liable for £400 in respect of a new bath, £100 in respect of fitting the bath and £50 in respect of the half-share of the thermostat

70. The Tribunal was not persuaded that the Applicant should recover the costs of decorating the Property. The Tribunal accepted the evidence of Mr Mills and the Respondent that the Applicant had agreed verbally to the Respondent decorating the Property, and did not ask to see the colour scheme. Had he wished to object to the colour scheme, he ought to have ensured that all proposals were notified to him in advance for approval.
71. The Tribunal considered that the picture holes in the wall fell under the category of normal wear and tear and were not justification for redecorating the Property.
72. The Tribunal considered that the marks on the bedroom carpets fell under the category of normal wear and tear and were not justification for replacing the bedroom carpets.
73. The Tribunal considered that the mark on the sink fell under the category of normal wear and tear and was not justification for replacing the sink and vanity unit.
74. The Applicant had claimed interest on the outstanding sum at the rate of 8% above the Bank of England base rate; however, this was not provided for in the tenancy agreement, therefore interest was applied at the use value rate of 3% per annum above the Bank of England base rate.

Decision

75. An order for payment in the sum of £3737.17 is granted in favour of the Applicant with interest thereon at the rate of 3% per annum above the Bank of England base rate running from the date of the decision to grant the order until payment.

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.

Helen Forbes
Legal Member/Chair

24th March 2021
Date