Housing and Property Chamber
First-tier Tribunal for Scotland

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/21/0245

Re: Property at Flat 3/1 Brunstfield Gardens, Edinburgh, EH10 4DX ("the Property")

Parties:

Mr Fraser Macdonald, Chemin de l'Oursiere 9, BP 1355, St Cergue, Switzerland ("the Applicant")

Mr Paul Hartmann, 3F3 5 Comiston Terrace, Edinburgh, EH10 6AJ ("the Respondent")

Tribunal Members:

Nicola Irvine (Legal Member) and Eileen Shand (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Applicant is not entitled to payment from the Respondent.

The decision is unanimous.

Background

[1] The Applicant made an application to the Tribunal date 31 January 2021 seeking an order for payment in terms of the Housing (Scotland) Act 2014 ("the 2014 Act") and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules and Procedure) Regulations 2017 ("the 2017 Rules").

[2] This dispute previously came before the Tribunal on 5 July 2021 at a Case Management Discussion ("CMD"), following which a Note summarising the CMD was issued to parties, setting out what matters were agreed and what issues were to be determined at a Hearing.

[3] A Hearing was assigned for 2 August 2021 and took place by conference call. Both parties participated in the hearing.

The Hearing

[4] Mr Macdonald advised that he intended to give evidence in support of his application but did not intend to call any witnesses in support of this application.

[5] Prior to hearing any evidence, the Tribunal reminded parties of the issues to be resolved, namely:-

(i) What was the contractual relationship between the parties
(ii) What type of tenancy did the Respondent have
(iii) What were the terms of the tenancy
(iv) Was property clearance and skip rental required and if so, was the Respondent responsible for the cost of that
(v) Was cleaning required and if so, was the Respondent responsible for the cost of that
(vi) Was the Respondent responsible for the cost of replacement lock and keys
(vii) Was the Respondent responsible for damage to flooring and windows

[6] Evidence was led from the Applicant and the Respondent. A summary of their evidence is contained below. Following the conclusion of the evidence in this case, the Hearing continued between the parties in respect of a related application which proceeds under chamber reference FTS/HPC/CV/20/2335.

Summary of evidence

<u>Fraser Macdonald</u>

[7] Mr Macdonald resides at Chemin de l'Oursiere 9, BP 1355, St Cergue, Switzerland. The Respondent is his former tenant. Mr Macdonald owned the property at Flat 3/1 Bruntsfield Gardens, Edinburgh and the Respondent was one of his tenants. The relationship between the parties was one of landlord and tenant. Both parties believed that they were operating in terms of the

2010 tenancy agreement, a copy of which is lodged. Many of the terms of the tenancy agreement concern the condition of the property.

[8] On 1 December 2020, a differently constituted Tribunal determined that the tenancy had ceased to exist and that the Respondent was a common law tenant. Mr Macdonald assumed that the terms of the common law tenancy were the same as the ones contained within the written tenancy agreement.

[9] At a case management discussion in an earlier application to the Tribunal involving these parties, Mr Macdonald offered to allow the Respondent to stay in the property until 1 November 2020. A subsequent Hearing took place on 1 December 2020 when pressed for an answer, the Respondent advised that he would relinquish occupation of the property. That Tribunal determined that the tenancy ended on 31 October 2020.

[10] The Respondent relied upon the terms of the written tenancy agreement many times. Both parties proceeded on the basis that the written tenancy agreement was in force.

[11] In support of his claim, Mr Macdonald relied upon breaches of the following clauses of the tenancy agreement:-

3(ee) – requirement to clean windows

3(z) – keys

3(gg) – property clearance

3(kk) – damage to the window pelmet

3(j) – requirement to clean the property

3(h) – damage to the floors

Mr Macdonald advised the Tribunal that there was also damage to the walls but this did not form part of his claim

[12] The tenant Charlotte Hocking left the property at the end of January 2020. The sub-tenant, Dr Katrina Morris left the property at the end of June 2020. The Respondent had sole occupation of the property from June until the applicant gained possession on December 1 2020.

[13] In response to questions from the Tribunal, Mr Macdonald confirmed that no inspections of the property had been carried out when Ms Hocking and subsequently Dr Morris had moved out, returning their respective keys.

[14] In response to questions from the Tribunal, he advised that if there were any repairs required or damage to the property, one of the tenants normally reported this. There had been no report made in relation to damage to the windows or the flooring. There had previously been damage caused to the floorboards in the living room of the property, caused by a previous tenant. Charlotte Hocking reported that and a repair was effected at a cost of approximately £200. Mr Macdonald considers that the Respondent is responsible for damage to the flooring and windows because the damage was not previously reported and he was in sole occupation from June to December 2020.

[15] Mr Macdonald gave notice to the Respondent that an inspection was to be carried out on 16 November 2020. That inspection was carried out by Mr Macdonald's agent, Lynne Hainsworth. No keys were found lying behind the door of the property. A window had been left open and the central heating was not switched on. Entry to the property on 16 November 2020 was recorded by video. When Charlotte Hocking and Dr Katrina Morris left the property, they returned their sets of keys. Despite him asking the Respondent to return keys, they were never returned. Mr Macdonald considered it necessary to have the lock replaced at the property because he did not know the whereabouts of the keys and considered that he had to secure the property as he was also concerned that, given the relationship with the Respondent had, by then become adversarial, damage might be done to the property. The lock was replaced after Mr Macdonald took possession of the property on 1 December 2020.

[16] In response to questions from the Tribunal, Mr Macdonald explained that the video footage produced by the Respondent was taken sometime in September 2020, which appears to show the property in a clean state. However, Mr Macdonald considered that the video footage was selective because it did not show clutter which had been left in the property such as recycling which had not been disposed of, exercise balls, an old television box and a cupboard containing old paint and flammable items. There was dust on the kitchen worktops and mildew in the bathroom. The windows

were dirty and needed to be cleaned. Mr Macdonald has produced photographs which were taken 2 weeks after the end of the tenancy. He considered that the Respondent is liable to pay for the cost of cleaning, window cleaning, property clearance and skip hire because of the condition in which the property was left. Although Charlotte Hocking had left items of property in the flat, she was given access to collect her belongings.

[17] In response to questions from the Tribunal, Mr Macdonald explained that the rent had not been paid by the Respondent since June 2020. Between 16 November 2020 and 1 December 2020, Mr Macdonald considered the property to have been abandoned. The Respondent had refused to relinquish occupation of the property.

[18] In response to questions from the Tribunal, Mr Macdonald explained that he never wishes to let out property again. He marketed this property for sale in January 2021 and it was sold in July 2021. He has produced an estimate in respect of damage to floors and windows, but the work was never carried out. He did not have the funds to have the repair work carried out to the floors and window. He decided to sell the property and believes that he would have achieved a higher price for the property had the repairs been carried out to the windows and floors.

Paul Hartmann

[19] Mr Hartmann resides at 3F3, 5 Comiston Terrace, Edinburgh. He is a former tenant of the Applicant. He signed a lease with the Applicant in 2011 and that is the only contract he signed. He was under the impression that that contract was still in force by the time he left the property, despite the Applicant having denied that continually for months. He believes that his basic right to live in the property peacefully were violated.

[20] The video footage lodged by Mr Hartmann showing the condition of the property was taken 2 days before he handed the flat over. It was in early September 2020. Mr Hartmann attended the property 28 days after he gave the Applicant notice that he intended to leave the property. Mr Hartmann did not want any further contact with the Applicant as he found him difficult to deal with.

[21] Mr Hartmann explained that he felt that he had to move out of the property for the benefit of his own mental wellbeing. He managed to find another property that he could safely move to. He made it clear that he had moved out of the property in September 2020 when he served notice on the Applicant.

[22] Mr Hartmann sent an email to the Applicant on 26 September 2020 giving 28 days' notice of his intention to leave the property. He left the property on 18 October 2020.

[23] Mr Hartmann removed all of his belongings from the property. None of his possessions were left in the property and accordingly he does not accept any liability to pay for the cost of property clearance or skip hire. The old television box which was left contained property belonging to Charlotte Hocking, including a typewriter. The paint left within the property was Farrow & Ball paint and was purchased by the Applicant in 2010 when the lounge, hallway and 2 bedrooms were painted. The tins of paint were retained for any necessary touch ups. Mr Hartmann was not responsible for decoration. The exercise ball belonged to someone else, not Mr Hartmann. There were some items left in the cupboard such as ladders, tools, brasso, t-cut, WD40, part of a writing desk and some shelving. None of these items belonged to Mr Hartmann and some of them pre-dated his tenancy.

[24] Mr Hartmann cleaned the whole property thoroughly. He had submitted video evidence to the Tribunal taken by him to show the property after he cleaned it. The flooring was in good condition. There was damage to the fireplace but that was present when Mr Hartmann moved into the property. The previous damage to flooring was caused by a former tenant called Raoul Dalgado, who had damaged the floor with a pushbike which he had built in the hallway of the property and the chain cog had scuffed the floor. The windows of the property were refurbished in 2010 and the contractors removed the window pelmet and did not replace it.

[25] In response to questions from the Tribunal, Mr Hartmann accepted that although the windows were clean when he left the property, they may have needed to be cleaned again when the Applicant took possession.

[26] In response to questions from the Tribunal, Mr Hartmann explained that the Applicant must have known that he had left the property because Mr

Hartmann had served a notice. After the expiry of the period of notice, Mr Hartmann attended at the property but the Applicant did not. Mr Hartmann posted a set of keys through the letterbox of the property.

[27] Mr Hartmann accepted that there may have been some dust in the property when the Applicant took possession, but disputed that there was any ingrained dirt. He had invited a neighbour to walk round with him to see the condition of the property which he was leaving and had submitted video evidence of this to the Tribunal.

[28] There was no condition report produced when Mr Hartmann took possession of the property in 2011. It was a house in multiple occupancy when he moved to the property.

[29] In response to questions from the Tribunal, Mr Hartmann could not explain why he did not take video footage of him delivering the keys through the letterbox, given that he had taken video footage of other matters. Mr Hartmann did not accept that there was any need for a lock change and new keys.

Findings in fact

[30] The Tribunal had regard to all of the written representations, documents and video evidence lodged, and the oral evidence given during the hearing, whether referred to in full in this Decision or not, in establishing the facts on the balance of probabilities. The Tribunal found the following facts established:

(i) The contractual relationship between the parties was one of landlord and tenant.

(ii) The Applicant had an assured tenancy in respect of the property.

(iii) The terms of the written tenancy agreement dated 1 November 2011 governed the relationship between the parties.

(iv) The Applicant incurred expenditure in respect of replacement locks, skip hire, cleaning and window cleaning.

Reason for decision

[31] The Tribunal found that this is not a case which turned on credibility and reliability of witnesses. There was little dispute on the facts and the critical issue was the interpretation of those facts in relation to the remedy sought by the Applicant. The Tribunal had no difficulty in accepting that the Applicant had incurred expenditure in respect of skip hire, replacement lock and keys, cleaning and window cleaning.

[32] In support of his claim, the Applicant relied upon a breach of certain clauses of the tenancy agreement, namely:-

3(h) To preserve the furniture equipment and effects from being destroyed or damaged and make good for repair with articles of a similar kind and of equal value such of the furniture and effects shall be destroyed lost broken or damaged.

3(j) To deliver up to the landlord the property and all original or new fixtures and additions thereto (except such as lawfully belong to the tenant) and the furniture equipment and effects specified in the inventory or the articles substituted for the same at the expiration or sooner determination of the tenancy in such good clean state and condition and repair as set out in this agreement and the said garden clean and tidy and properly tended.

3(z) If any such additional keys are made deliver the same up to the landlord together with all original keys at the expiration or sooner determination of the tenancy and in the event that any such keys have been lost pay to the landlord on demand any costs incurred by the landlord in replacing the locks to which the lost key belonged.

3(ee) To clean all the windows of the property and all the net curtains therein once at least in every three months of the tenancy and at the end of the tenancy.

3(gg) Not to deposit any store of coal or fuel elsewhere than in any receptacle or tank provided for the purpose nor keep any combustible inflammable dangerous or offensive goods provisions liquids substances or materials on the property.

3(kk) Not to pull down alter add or in any way interfere with the construction or arrangement of the property or the internal or the external decoration or decoration scheme or colours thereof

[33] In respect of skip hire for the purpose of clearing the property, there was no evidence from the Applicant that the items removed belonged to the

Respondent. There had been no inspection of the property after previous tenants left. The Respondent's evidence that none of the items left behind in the property belonged to him was unchallenged. The Tribunal was not satisfied that the Respondent was responsible for items left in the property and therefore was not satisfied that this head of claim is recoverable from the Respondent.

[34] The Tribunal accepted the evidence of the Applicant that he had incurred expenditure in respect of cleaning and window cleaning. The Tribunal had regard to the video evidence submitted by the Respondent, which shows the condition of the property after he cleaned it. The Tribunal noted the concession made by the Respondent that dust may settle after a few weeks and therefore the property may need a light clean. The Applicant recovered possession of the property on 1 December 2020. He did not have the property cleaned until 23 December 2020. Although the Tribunal accepted that the Applicant employed a contractor to clean the property, it was not satisfied that this sum is recoverable from the Respondent.

[35] Clause 3(ee) of the tenancy agreement provides that the tenant will clean the windows every three months and at the end of the tenancy. The evidence from the Respondent that he cleaned the windows before he left the property was unchallenged. Albeit the Tribunal accepted that the Applicant employed a contractor to clean the windows, it was not satisfied that this sum is recoverable from the Respondent.

[36] Clause 3(z) of the tenancy agreement provides that the tenant shall pay to the landlord costs incurred in replacing locks in the event that keys are lost. Although there is a legal basis upon which the Applicant can seek payment from the Respondent, the Tribunal was not satisfied that the cost of replacement locks is recoverable from the Respondent. The Respondent gave evidence that he delivered the keys through the letterbox. The Applicant was not personally present when possession of the property was recovered. There was no direct evidence on this point from the Applicant's agent who recovered possession of the property. The Tribunal was not satisfied that any sum is recoverable from the Respondent in respect of this head of claim.

[37] The Applicant did not incur any expenditure in respect of damage to the floors and windows. He had produced a quotation for work required but ultimately did not instruct that work to be done. His position was that the market value and indeed the sale price he achieved for the property would have been higher had that work been done. There was no evidence such as a home report to support the contention made by the Applicant. Moreover, there was no evidence that any damage to the floor and windows were caused by the Respondent. The

Tribunal was not satisfied that any sum is recoverable from the Respondent in respect of this head of claim.

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.

N Irvine

Legal Member/Chair	**22 August 2021** **Date**