



**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/PR/19/3556**

**Re: Property at 118 Springfield, Edinburgh, EH6 5SD (“the Property”)**

**Parties:**

**Miss Karen Todd, 122 Crewe Road West, Edinburgh, EH5 2PE (“the Applicant”)**

**Ms Lynne Ann McTaggart, 295 Gilmerton Road, Edinburgh, EH17 7PR (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £500.**

**Background**

By application, received by the Tribunal on November 2019, the Applicant sought an Order for Payment in respect of the failure of the Respondent to return a tenancy deposit, having failed to lodge it in an approved tenancy deposit scheme.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 28 April 20016 at a rent of £650 per month with a deposit also of £650.

In the application, the Applicant stated that she had lived in the Property for 13 years and had vacated it on 30 September 2019. The Property had been left in a fit state, allowing for 13 years’ fair wear and tear. The Respondent had not, however, returned the deposit and the Applicant had ascertained that it had not been lodged in an approved tenancy deposit scheme as required by the Tenancy Deposit Schemes (Scotland) Regulations 2011.

On 28 November 2019, the Applicant provided the tribunal with a number of photographs which, she said, showed the condition of the Property when she vacated it. The Respondent had been present at the time and had made no comments about the Property, but she had been accompanied by a tradesman who she was intending to instruct to carry out works, as the Respondent was moving in and was replacing all the carpets etc. due to natural wear and tear.

On 27 December 2019, the Tribunal advised the parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to make written representations by 17 January 2020.

In written representations, the Respondent stated that there had been a verbal understanding and agreement between the parties that the Applicant would maintain the interior and exterior of the Property in the manner it was given and that, in return, the Respondent would not increase the rent. The Applicant had returned the Property in a dirty and damaged condition. The Respondent believed it was within her rights to withhold the deposit in order to help make the Property habitable again. She attached a list of some missing and damaged items, as well as photographic evidence of such claims.

### **Case Management Discussion**

A Case Management Discussion was held at Riverside House, Gorgie Road, Edinburgh on the afternoon of 29 January 2020. Both Parties were present. The Applicant told the Tribunal that the washing machine had been repaired on a number of occasions but when the engineer had said it was no longer worth repairing, the Applicant had, with the agreement of the Respondent, bought and installed a second hand washing machine, which she had then removed at the end of the tenancy. This was also the case with the dishwasher. The Respondent's view was that they should have been left when the Applicant moved out. She also contended that the kitchen worktop had been damaged, but the Applicant denied this and pointed out that the Respondent had been present to inspect the Property immediately prior to the Applicant moving out. The Respondent also said that she was having to pay for repairs to the external walls where holes had been drilled for cable television connection and that she felt the Applicant had simply "walked away" and had not faced up to her responsibilities with regard to the condition in which she left the Property and that she had done this despite having had very favourable treatment by the Respondent in keeping the rent at its original level for all but the last six months of the lease.

### **Reasons for Decision**

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application.

The Tribunal noted that the tenancy had lasted some 13 years and it was reasonable to assume that the effects of fair wear and tear, for which a landlord is responsible, over such a long period, would be considerable. The Respondent had referred to a verbal agreement between the Parties, but, in the absence of an admission of that by the Applicant, the Tribunal could look only at the terms of the lease, which specifically excluded liability for fair wear and tear. The Respondent had provided a list of items she said were missing when she resumed the Property, but no Inventory

taken at the commencement of the tenancy was produced to the Tribunal, so the Tribunal could not uphold the Respondent's claims in this regard. The Tribunal accepted the evidence of the Applicant that she had replaced the washing machine and dishwasher with ones of her own, when the ones provided by the Respondent had reached the point of not being worth repairing and that the Respondent had been aware that this was what she had done. The Applicant was entitled to remove them at the end of the tenancy as they were her property, bought as an alternative to the Respondent having to replace them during the tenancy. With regard to the list of "damaged Items" which the Respondent had provided, the view of the Tribunal was that, in the absence of expert opinion to the contrary, these could reasonably be attributed to fair wear and tear and could not be attributed directly to fault on the part of the Applicant, apart from items of garbage which were in the shed, which was a relatively minor matter. After a 13 year tenancy, a landlord would expect to have to completely redecorate a property and to replace the carpets. The Tribunal accepted, however, that account had to be taken of the fact that the cooker had not been properly cleaned and that oil stains on the driveway had not been cleaned off. The Tribunal was aware that it was not possible to put a precise figure on matters for which the Applicant might reasonably be held to be responsible and that its Decision would have to be based on a "broad brush" approach. Taking everything into account, the Tribunal's Decision was that the Applicant's deposit should be reduced by £150.

### **Decision**

The Tribunal determined that the application should be decided without a Hearing and made an Order for Payment by the Respondent to the Applicant of the sum of £500.

### **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.**

George Clark

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**Legal Member/Chair**

29 January 2020  
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**Date**