



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

**Chamber Ref: FTS/HPC/CV/22/4426**

**Property: 3 Balfron Loan, Edinburgh EH4 7LA (“Property”)**

**Parties:**

**Krzysztof Kuncewicz, 3 Balfron Loan, Edinburgh EH4 7LA (“Applicant”)**

**Catherine Smith, 244 Willowbrae Road, Edinburgh EH8 7NG (“Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £1538.98 plus interest thereon at the rate of 8% per annum should be made.**

**Background**

1. The Applicant sought an order for payment of £2938.98 plus interest at the rate of 8%. The Applicant had lodged Form F on 15 December 2022 along with the following documents :
  - A Private Residential Tenancy Agreement dated 23 January and 13 February 2019 which commenced on 13 February 2019.
  - A statement of rent arrears.
  - An invoice from Roy Glen (Cleaning Services) dated 24 July 2022 for £215 in respect of a deep clean.
  - An invoice from Regenerate Edinburgh Ltd dated 29 August 2022 for £200 in respect of clearance.
  - An invoice from VTK Investigations dated 17 November 2022 for £60 in respect of a trace.

- An invoice from Trinity Lettings dated 20 February 2019 for £148.50 in respect of keys and installation of a shower curtain and poll.
- Quotation from Hinter Land Studio dated 29 July 2022 for £500 for hedge trimming, chemical treatment and clearing weeds
- A written representation.

### **Case Management Discussion (“CMD”)**

2. A CMD was scheduled to take place before the Tribunal on 12 October 2023. A representation was received from David McDonald in which he said that he was the Respondent’s son and that she was in hospital and was too ill to attend the CMD. Mr McDonald was asked to provide a mandate from the Respondent authorising him to act on her behalf on 4, 11 and 12 October 2023. No mandate was received. On 11 October 2023 Mr MacDonald emailed the Tribunal saying that he would provide a letter from the Respondent’s GP regarding her health. The Tribunal postponed the CMD. No letter from the Respondent’s GP was subsequently received. On 12 October 2023 the Tribunal emailed Mr MacDonald asking him to provide evidence of authority to act as well as any documentation available confirming the Respondent’s inability to take part in a CMD due to ill health such as a letter from her GP or evidence of her admission to hospital and a written representation in respect of the claim made by the Applicant. Mr MacDonald responded by email dated 27 October 2023 in which he did not provide authority to act, said that the Respondent’s GP refused to provide a letter and said that all elements of the claim were disputed.

### **Continued CMD**

3. A continued CMD took place on 23 January 2024. The Applicant was in attendance. There was no appearance by the Respondent. Notification of the date of the continued CMD was given to the Respondent by email on 12 December 2023. The Tribunal received an email from the email address of the Respondent but signed off by David MacDonald at 00.50 on 23 January 2024 in which he sought a postponement of the CMD due to the ill health of the Respondent. As Mr MacDonald had not provided evidence of authority to act and as nothing had been lodged to confirm the state of the Respondent’s health in response to requests for such evidence, the Tribunal determined to refuse the postponement request and to proceed in the absence of the Respondent.
4. The Applicant told the Tribunal that the tenancy came to an end on 13 July 2022. He said that he wanted to carry out renovation work to the Property and gave the Respondent notice of that in November 2021. He said she should have

removed in May 2022 but did not remove until July 2022. He said that the Respondent removed without the need for an eviction order.

5. The Tribunal noted that the Applicant sought to recover from the Respondent £2938.98 which was made up of unpaid rent of £1538.98 and £1400 in respect of other losses. The Tribunal noted that the Applicant had provided a breakdown of costs incurred totalling £1123.50 which were largely covered by the deposit of £1118. The Tribunal asked the Applicant if the deposit had been held in an approved scheme and if the adjudication process utilised by the scheme had been used. The Applicant said that the deposit had been held in an approved scheme although he could not remember which one and that the deposit had been paid to him after several months. The Tribunal considered each element of the claim in turn as follows.
6. **Rent Arrears for period 13 May to 13 July 2022 - £1538.98:** The Applicant had lodged a statement of rent arrears which showed the rent was unpaid on 13 May, 13 June and 13 July 2022 leaving a balance due of £1538.98. The Applicant confirmed he wished to recover interest at the rate set out in the tenancy agreement. The Tribunal asked the Applicant if he had any contact with the Respondent since the end of the tenancy, he said he had not.
7. **Remove satellite dish - £40:** The Tribunal asked who installed the satellite dish. The Applicant said that it was installed by the Respondent and he did not wish to retain it. The Tribunal asked if this work had been done and if an invoice was available. The Applicant said that the work had been done by a workman carrying out work to the cement coating of the external walls of the Property. He said the workman removed the satellite dish as part of those works. The Tribunal asked if an invoice was available and the cost of the overall works. The Respondent said the cost of the overall works was £1700 and that he had no invoice. The Tribunal asked if the cost of the works had been broken down by the workman. The Applicant said that £40 was his estimate of the proportion of the cost attributed to removal of the satellite dish.
8. **Remove fence - £100:** The Tribunal asked who installed the fence. The Applicant said that it was installed by the Respondent without his permission. The Tribunal asked if this work had been done and if an invoice was available. The Applicant said that he did the work himself. The Tribunal asked if any costs were incurred relating to disposal of the fence. The Applicant said there were not but that it had taken up his time. He said that his occupation was as a software engineer.
9. **Flat rental for 14 days - £1120 and Van rental - £140:** The Applicant said that the floors in the Property were old wooden boards and he wanted to replace

them with plywood or MDF and to install insulation. He said that the plan had been for the work to be done when the Respondent moved out. He was however unable to do the work when the Respondent moved out because he did not have enough money due to the Respondent not having paid the rent. He said that if the Respondent had paid her rent he could have paid for the work and continued to live in his previous rented property while the work was ongoing. He said that the mortgage on the Property was about the same as the rent at the relevant time so he had to use his own funds to pay the mortgage when the rent was unpaid. The Applicant said that if he was to do the work now he would have to move out of the Property (where he now lives) to rented accommodation while the work was being done. The Tribunal asked if the floor required to be replaced due to the fault of the Respondent or whether the works were an improvement to the Property. The Applicant said that the works were not due to any damage caused by the Respondent and were an improvement. The Applicant confirmed that the proposed floor works had not been carried out.

### **Findings in Fact**

10. The Tribunal made the following findings in fact:

- The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement dated 23 January and 13 February 2019 which commenced on 13 February 2019 ("Tenancy Agreement").
- In terms of the Tenancy Agreement the rent was £745 per calendar month.
- The tenancy came to an end on 13 July 2022.
- The Respondent failed to pay the rent due on 13 May, 13 June and 13 July 2022 totalling £1538.98.
- In terms of clause 8 of the Tenancy Agreement the Applicant may charge interest on unpaid rent at the rate of 8%.

### **Reasons for the Decision**

11. In terms of the Tenancy Agreement rent was due at the rate of £745 per month. The tenancy came to an end on 13 July 2022. The Respondent failed to pay the rent due on 13 May, 13 June and 13 July 2022 totalling £1538.98. In terms of clause 8 of the tenancy agreement the Applicant is entitled to charge interest on unpaid rent at the rate of 8%. The Tribunal determined to grant an order for payment of the unpaid rent plus interest thereon.

12. As regards the claim for payment of £40 to remove a satellite dish, the claim was unvouched. The sum claimed was estimated by the Applicant as being the relevant proportion of the amount charged by a workman for work to the external walls of the Property. In the circumstances the Tribunal was not content to grant an order for payment of that amount.
13. As regards the claim for payment of £100 to remove a fence, the work had been carried out by the Applicant. No actual costs were incurred. In the circumstances the Tribunal was not content to grant an order for payment of that amount.
14. As regards the claim for payment of £1260 in respect of the cost to rent alternative accommodation and hire a van in order to allow the Applicant to remove from the Property whilst flooring was replaced, the Tribunal was not content to grant an order for payment of this element of the claim. The replacement of the flooring was an improvement to the Property and was not required due to damage caused by the Respondent. Further, the work had not been carried out despite the tenancy having ended in July 2022. The Applicant has not actually incurred any loss. The Tribunal also had difficulty identifying a causal link between the failure to pay rent by the Respondent and the Applicant having to pay for alternative accommodation whilst improvement works were carried out to the Property. Even if a causal link could be established it seemed to the Tribunal that the claim was too remote to be recoverable.

### **Decision**

15. The Tribunal grants an order for payment of £1538.98 plus interest thereon at the rate of 8% per annum.

### **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.**