



**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/22/0368**

**Re: Property at Parkview, Carberry Mains, Musselburgh, EH21 8PX (“the Property”)**

**Parties:**

**Trustees of the Blackwood Family Discretionary Trust, Trustees of the Blackwood Family Discretionary Trust, Trustees of the Blackwood Family Discretionary Trust, 1 Carberry Mains, Musselburgh, Midlothian, EH21 8PX (“the Applicant”)**

**Mr Mohammed Malik, Parkview, Carberry Mains, Carberry, Musselburgh, EH21 8PX (“the Respondent”)**

**Tribunal Members:**

**Lesley Ward (Legal Member) and Angus Lamont (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondent shall make payment to the applicant the sum of two thousand seven hundred and twenty eight pounds and fifty five pence (£2728.55) with interest at three percent per annum (3%) from 29 July 2022 until payment.**

**Background**

1. This was a hearing in connection with an application for rent arrears in terms of s16 of the Housing (Scotland) Act 2014 and Rule 70 of the First-tier Tribunal for Scotland (Procedure) Regulations 2017 (‘the rules’). The Applicant Mrs Elayne Blackwood attended. Mrs Blackwood is a trustee of the Blackwood Family Discretionary Trust and was represented by Ms Kirsty Donnelly solicitor. The Respondent attended. The case first called for a case

management discussion 'CMD' on 6 May 2022. At that time there was a second application before the tribunal for eviction. That application was withdrawn on 22 July 2022 on the basis that the respondent had vacated the property. Four other members of the respondent's family were party to the tenancy agreement, three of which had been included as respondents in the application. As they had moved out of the property prior to the CMD they were removed from the application by agreement of the parties.

2. The tribunal had before it the following copy documents: -

- (1) Application dated 1 February 2022.
- (2) Tenancy Agreement dated 7 March 2017.
- (3) Land certificate.
- (4) Disposition by Elayne Georgina Blackwood in favour of Blackwood Discretionary Trust.
- (5) Pending application to land register.
- (6) Email from Stuart Allister dated 25 January 2022.
- (7) Email from Jamie Blackwood dated 25 January 2022,
- (8) First named respondent's written submissions dated 4 April 2022.
- (9) Email from Mr Ahmad to the tribunal dated 4 May 2022 with handwritten submissions by first named respondent.
- (10) Rent statement
- (11) 92 photographs

### **Preliminary matters**

3. The hearing was initially due to take place in person. This was requested by the respondent and the tribunal at the CMD considered that this was a reasonable request given the eviction was defended. The respondent wrote to the tribunal by email on 19 July 2022 stating that he had left the property and he would not be attending the hearing. The tribunal in accordance with the overriding objective decided that the hearing should revert to a teleconference. In any event Mr Malik attended the hearing. The applicant had lodged a late inventory of productions on 28 July 2022 outwith the 7 day period required by rule 13 on the basis that the sum sought had reduced and the new rent statement had been produced to reflect this. The tribunal allowed the late production given the sum sought had reduced.

### **The applicant's position**

4. Miss Donnelly submitted that the applicant was seeking an order for £2728.55 as set out in the most recent rent statement. She had been instructed to lodge the photographs to show the condition of the property on 21 July 2022, a few days after the respondent left. It was her submission that the deposit could not be applied to the arrears as the property had been left in a poor condition and the cost of returning the property to an acceptable condition would be likely to exceed the deposit. Miss Donnelly also invited the tribunal to grant interest as

set out in the application. She suggested that 3% was fair in all of the circumstances.

### **The respondent's position**

5. Mr Malik made reference to the written submission he had lodged for both the eviction application and the rent arrears application. Mr Malik had not lodged any supporting documentation in connection with his submission and he stated that he did not have any receipts or evidence to lodge as he did not keep these. His written submission made reference to costs he had incurred for gardening and to replace a lock. He also stated that contrary to the tenancy agreement, the deposit was £1500 and not £1300. It was his submission that the deposit should be applied to the arrears.

### **Hearing**

6. The tribunal heard oral evidence from the applicant and respondent. It was Mr Malik's evidence that he incurred costs while he was a tenant of the property. He did not have any vouching for the costs, but it was his evidence that he had paid a gardener £300 on one occasion and he had paid out further sums of £40 at a time. He had also incurred costs of £180 due to changing one of the locks. Mr Malik did not accept that he had left the property in a dirty and messy condition. He gave evidence that he had not reviewed the full 92 photographs that had been lodged but he disputed that the ones he had looked at were an accurate reflection of the condition he left the property. It was his evidence that he and his family had lived in the property for 5 years and some wear and tear had to be expected. Mr Malik did not disagree that the arrears of rent were £2728.55 but it was his evidence that the money he had paid out and the deposit were sufficient to cover any sum due.
7. The tribunal heard oral evidence from Mrs Blackwood regarding the rent statement and how the sums had accrued. It was her evidence that rent arrears began to accrue on 6 December 2021 upon the expiry of a notice to quit she had issued. She had lodged photographs which showed the property in a very poor state. It was her evidence that the respondent had an obligation to maintain the garden of the property, but with the exception of two visits by a gardener, this had not happened. Regarding the change of locks, it was her evidence that the respondent had reported a faulty lock and she had paid for the repair. She did not accept that a lock had been changed during the respondent's period of occupation as the keys returned by the respondent were the original keys and they still worked.

## **8. Findings in fact.**

- Mrs Blackwood is a trustee of the Blackwood Family Discretionary Trust who own a 23 % pro indiviso share of the property. Mrs Blackwood owns the remainder of the property.
- Mrs Blackwood, the respondent and four other members of the respondent's family entered into a short assured tenancy agreement on 7 March 2017 for let of the property for the initial period from 7 March 2017 until 7 September 2017 and month to month thereafter.
- The agreed monthly rent was £1300.
- Rent arrears began to accrue in December 2021.
- The respondent left the property on 15 July 2022.
- The rent arrears from December 2021 to July 2022 were £2728.55.
- The sum of £2728.55 remains outstanding.

## **Reasons**

9. This was an application to recover rent arrears arising out of a short assured tenancy agreement. The CMD had been adjourned to enable the respondent to obtain legal advice and for the level of the rent arrears to be clarified. A face to face hearing was assigned. For the reason already stated, the hearing reverted to a teleconference. The respondent had lodged a written submission before the CMD making reference to sums that he felt should be deducted from the rent arrears, but he had not lodged any vouching for these sums. The tribunal heard evidence from Mr Malik in support of his position. He did not dispute the current arrears but that he was seeking to have several hundred pounds he stated he had incurred for gardening to be deducted from the arrears. There was a clear provision in clause 12 of the tenancy agreement which stated that it was the tenant's responsibility to keep the garden tidy and free from weeds. Mr Malik's position was that Mrs Blackwood repeatedly complained to him about the condition of the garden and that he had incurred costs as a result. Mr Malik was unable to quantify what he was claiming but his written submission made reference to a sum of £300 and further sums of £40 per fortnight.
10. Regarding the lock, again Mr Malik did not produce any vouching and Mrs Blackwood's evidence was that a sum was incurred by Mr Malik for a lock and she had reimbursed him for that.
11. Taking Mr Malik's evidence at its highest level, the tribunal was not satisfied that there was any evidence before it to enable the tribunal to make any deductions from the rent due by Mr Malik. Mr Malik was responsible in clause 12 of the short assured tenancy agreement for keeping the garden tidy. Any sums he incurred as a result were a matter for him and not the responsibility of the applicant. Regarding the lock, the tribunal was not satisfied that a deduction could be made as no vouching had been produced. It was not clear

to the tribunal that a lock had actually been replaced or that Mr Malik was out of pocket as Mrs Blackwood had given evidence that she had reimbursed Mr Malik for a lock repair rather than a replacement.

**12.** Regarding the deposit, the photographs lodged by the applicant appeared to show that that Mr Malik had left the property in a very poor state. The tribunal did not find Mr Malik's evidence that he had left the property in a clean condition to be credible in the light of the photographs produced by the applicant. The purpose of the deposit scheme was to adjudicate these matters and the tribunal did not consider it was fair to deduct any of the deposit from the rent arrears in the circumstances.

**13.** Accordingly, the tribunal was satisfied that there were rent arrears outstanding in the sum of £2728.55 and the tribunal granted an order for this sum. The tribunal also awarded interest at the rate of three percent as set out in the application and in accordance with rule 41A of the rules.

## **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.**

# Lesley Ward

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**Lesley A Ward Legal Member**

**29 July 2022**\_\_\_\_\_

**Date**