



**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/19/3900

**Re: Property at Westfield Cottage, Little Brechin, Angus, DD9 6RQ (“the
Property”)**

Parties:

**Dr Xanthe Mallett, 27 Fremont Avenue, Errington, New South Wales, Australia,
2115, Australia (“the Applicant”)**

**Mr Paul Loud, Mrs Leanne Lloyd, 4 Trinity Fields Crescent, Brechin, DD9 6YF
(“the Respondent”)**

Tribunal Members:

Petra Hennig-McFatrige (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that that an order for payment of the sum of £2,456
should be granted in favour of the Applicant.**

Background:

[1] The application was made on 5 December 2019. The application asked for an order for payment then of £2,100 rent arrears and damages for breach of contract for £256 for removal of rubbish from the property and £100 for cleaning of the oven in the property.

[2] Attached to the application were:

1. the Tenancy Agreement for the property commencing 20 March 2017
2. Printout of rental payments for the property to 6 April 2018 showing a total payment of £9100 in rent
3. Bank Statement extract showing further payments relating to the property in April and June 2018
4. Invoice ABC Scotland for £256 for refuse removal
5. ABC Scotland quote for £100 for oven cleaning

6. 3 Photographs showing the condition of the over of the property
7. 3 Photographs showing the accumulation of rubbish in and around the property

[3] A first Case Management Discussion (CMD) took place on 7 February 2020 when the Tribunal continued the matter to a further CMD to allow the Applicant to confirm with the co-owner of the property Mr Telling that there was no opposition by him for the application being made in the name of the Applicant only. The notification and guidance notes together with the application and case documents had been served on the Respondents by Sheriff Officers on 9 January 2020. The Respondents did not attend the CMD

[4] A further CMD was then fixed for 31 March 2020, however the Covid-19 restrictions led to the CMD having to be cancelled due to the venue having closed.

[5] The Applicant's representatives submitted a tracing report showing the Respondents current address and asked for the application to be amended accordingly. They also produced the mandate from Mr Telling dated 27 February 2020 confirming his agreement for the application to be raised in the sole name of the Applicant.

[6] A further CMD was scheduled for 25 August 2020. The Respondents were advised of the date and time and log on details for the CMD by teleconference by letter of 4 August 2020. The recorded delivery track and trace record confirms that this was signed for by the Respondents on 5 August 2020.

[7] The Tribunal thus considers that the appropriate notice has been given to the Respondents.

[8] No representations were received from the Respondents. The Respondents had not contacted the Tribunal prior to the CMD and did not attend.

The Case Management Discussion

[9] In terms of Rule 17 (1) (a) of the Procedural Rules a CMD may be held by conference call. The CMD was held by conference call on 25 August 2020 at 14:00. The Applicant did not participate but was represented by Louise Cameron from Friends Legal. The Respondents did not participate.

[10] Ms Cameron advised that the tenancy continued to 22 August 2018 but that rental payments stopped in April 2018. The rental payments received in April 2018 were allocated to the period up to 20 March 2020 and the Applicant then received, as shown on the bank statements, a further payment of £700 on 25 June 2018 towards the arrears from the letting agents Shiells. The deposit was released to the Applicant in October 2018 and thus the rent for the period up to 20 May 2018 was covered by these two payments. The arrears still outstanding relate to the period of 21 May to 22 August 2018. Rent was payable at £700 per month and the arrears thus were £2,100 for those 3 months. Furthermore the Applicant paid the invoice and also a subsequent invoice relating to the quote for oven cleaning. Unfortunately only

the quote and not the payment confirmation for that item was available. The Applicant is accordingly seeking payment of the sum of £2,456.

[11] There were no representations from the Respondent and the application was thus undefended. The facts in the case were not in dispute.

[12] Findings in Fact:

1. The parties entered into an Assured Tenancy for the property with a start date of 20 March 2017 (Clause 3).
2. Rent of £700 per month is payable monthly in advance (Clause 4)
3. The Respondent left the property on 22 August 2020.
4. The last rental payment by the Respondents was made in April 2018 and allocated to the month of March 2018 as no payment had been received for March 2018.
5. The letting agent paid the Applicant £700 on 25 June 2018 as a compensatory payment towards the arrears for the property.
6. The deposit of £700 as per Clause 5 of the Tenancy Agreement was paid over to the Applicant in October 2018 and allocated to the existing arrears.
7. The outstanding amount as of the date of the CMD is £2,100, which is the equivalent of 3 rent payments for the months of June, July and August 2018.
8. In terms of Clause 10.4 vi of the tenancy agreement the Respondents agreed to take reasonable care of the accommodation and any common parts and in particular agreed to take all reasonable steps to ensure the property and its fixtures and fittings are kept clean during the tenancy.
9. In terms of Clause 10.7 of the tenancy agreement The Tenant agrees to dispose of all rubbish in an appropriate manner and at the appropriate time.
10. When the Respondents left the property on 22 August 2018 rubbish had been accumulated in and around the property in breach of Clause 10. 7 of the tenancy agreement..
11. This had to be removed by the Applicant at a cost of £256 as per the invoice from ABC.
12. When the Respondents left the property on 22 August 2018 the oven in the property had been left in an extremely dirty state in breach of Clause 10. 4 vi. of the tenancy agreement.
13. This had to be cleaned by the Applicant at the cost of £100 as per the estimate from ABC.

Reasons for the Decision:

[13] The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and the information given at the hearing by the Applicant's representative.

[14] In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b)by videoconference; or

(c)by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a)identifying the issues to be resolved;

(b)identifying what facts are agreed between the parties;

(c)raising with parties any issues it requires to be addressed;

(d)discussing what witnesses, documents and other evidence will be required;

(e)discussing whether or not a hearing is required; and

(f)discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

[15] However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a)may make a decision without a hearing if the First-tier Tribunal considers that—

(i)having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii)to do so will not be contrary to the interests of the parties; and

(b)must make a decision without a hearing where the decision relates to—

(i)correcting; or

(ii)reviewing on a point of law,
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

[16] The Respondents did not make any written representations and did not attend the CMD. The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

[17] The Applicant is seeking an order for payment of rent arrears for the property and for damages arising out of the breach of the obligations entered into by the Respondents as tenants under the tenancy agreement stated in Clauses 10.7 and 10.4 vi of said agreement.

[18] In terms of the tenancy agreement the Applicant is entitled to monthly rental payments of £700. 3 months rent for the period of June, July and August 2018 have not been paid. The arrears of rent still outstanding are £2,100.

[19] The photographs clearly show a significant accumulation of rubbish in and around the property when the Respondents moved out. In terms of Clause 10.7 of the tenancy agreement they were under an obligation to dispose of all rubbish in an appropriate manner. They had breached that obligation. The Applicant as landlord has incurred expenses of £256 to have the rubbish removed due to the Respondents' breach of their contractual obligations and is entitled to damages for that loss.

[20] The photographs clearly show that the oven in the property had been left in a very dirty state by the Respondents when they moved out of the property. They had an obligation in terms of Clause 10.4 vi of the tenancy agreement to keep the property and its fittings and fixtures clean. They breached that obligation. The Applicant as landlord of the property incurred expenses of £100 to have the oven professionally cleaned due to the Respondents' breach of their contractual obligations and is entitled to damages for that loss.

[21] There was no defence to the action. The Respondents did not dispute that as of 25 August 2018 the arrears are £2,100 and further damages of £356 are due to the Applicant from the Respondents' breach of contract. These amounts were intimated and stated in the application and not disputed.

Decision

[22] The Tribunal grants an order against the Respondent for payment of the sum of £2,456 to the Applicant constituting arrears of rent for 3 months for the months of June, July and August 2018 totalling £2,100 and damages for breach of contract for costs incurred by the Applicant in connection with rubbish removal and cleaning of the oven of the property for £356.

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.

**Petra Hennig McFatrige
Legal Member**

**25 August 2020
Date**