



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) arising out of a tenancy under Section 32 of the Housing (Scotland) Act 1988 (the 1988 Act)**

**Chamber Ref: FTS/HPC/CV/20/0952**

**Re: Property at Flat 2-2, 32 Battery Place, Rothesay, PA20 9DU (“the Property”)**

**Parties:**

**Mrs Catherine Edmond, c/o 5 MacKinlay Street, Rothesay, Isle of Bute, PA20 0AY (“the Applicant”)**

**Ms Emma Costello, Flat 2/2, 32 Battery Place, Rothesay, PA20 9DG (“the Respondent”)**

**Tribunal Members:**

**Susan Christie (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for payment by the Respondent to the Applicant in the sum of £2,907.08 is granted, with interest at the rate of 2% per annum for today’s date until paid.**

**Background**

- 1 The Application under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) was made by the Applicant’s Representative on 20 March 2020.
- 2 A Notice of Acceptance of Application is dated 23 April 2020.
- 3 The Applicant seeks a payment Order.
- 4 A conference call Case Management Discussion (CMD) was scheduled and took place on 19 August 2020. Both Parties participated. It was continued to a further CMD as an application had been made to introduce new elements to the Claim and to increase the sum sought. Further paperwork had been produced which needed to be considered by the Respondent and further evidence was directed to be lodged, as detailed in the Direction issued by the Legal Member of the same date.

## Case Management Discussion (CMD) 7 October 2020

- 5 A Case Management Discussion (CMD) took place on today at 2p.m. by conference call. The Applicant's Representative, Ms McLaughlin, participated as well as the Respondent.
- 6 The original paperwork submitted along with the Application, the Response documentation and the additional representations and evidence produced by the Applicant's Representative, was considered and discussed.
- 7 The Short Assured Tenancy (SAT) between the Applicant and the Respondent was signed on 4 March 2016. It was for an initial term from 18 March 2016 to 17 September 2016, then recurred monthly thereafter by agreement until terminated. An AT5 had been produced along with an acknowledgement showing that it had been served prior to the SAT being signed.
- 8 The rent under the SAT was £300 per calendar month, payable in advance.
- 9 The Respondent had been served with a Notice to Quit and a Section 33 notice under the 1988 Act which had been produced with the Application. This required her to leave the Property by 5 November 2018. Whilst there were flaws in those documents, the Parties agree that this contact resulted in the Respondent leaving the Property on 15 December 2018.
- 10 The headings of Claim were each examined, and agreement was reached as follows
  - I. Rent- The Respondent had quit the Property as she had received a notice to quit. She had not initiated the termination by issuing a tenant notification, no period of notice applied. The figure due and owing was agreed at £1523.08.
  - II. No interest was applicable on late or unpaid rent as there was no contractual provision entitling the Applicant to seek this.
  - III. The Respondent was not liable for the utility top up and reconnection sum sought as she had left the meters in credit, albeit there had been work carried out in the Property after her departure which might have led to this situation occurring.
  - IV. Damage/repairs attributable to the tenant- A compromise figure was agreed of £1094 to allow a decision to be made today, which reflected the cost of new carpets.
  - V. Fridge replacement- the SAT declared that the property was let unfurnished and the original Inventory could not be produced. It was suggested that the fridge that was in the Property in fact belonged to the former tenant and had been put in an outbuilding by the Respondent who never used it during her occupation. The Respondent's liability therefore could not be evidenced, and no sum was due for this part of the claim.
  - VI. Removal of goods- The Respondent did not dispute that items had been left and needed to be disposed of and agreed liability for the sum of £290.
  - VII. Costs associated with pre- application track and trace and costs incurred by the Applicant, attributable to work carried out by the

Landlords agent- there was no contractual provision entitling the Applicant to seek this, and no sum was due for this part of the claim.

- VIII. The total sum agreed to be due and owing by the Respondent to the Applicant is £2,907.08.
- IX. No time to Pay Application is with the papers. The Respondent declined to take the opportunity offered today to complete one with the assistance of the Clerk and instead the Parties agreed that discussions would take place between them at a later date to seek to agree instalment payments to discharge the debt over a period of time.
- X. Interest was discussed in the context of the Order to be made. I considered that 2% was a reasonable figure to be applied, which is more in line with the use value of the sum due having regard to a broad estimate of the borrowing rate for short terms loans currently.

### **Findings in Fact**

- I. The Applicant entered a Short Assured Tenancy (SAT) with the Respondent over the Property on 4 March 2016. It was for an initial term from 18 March 2016 to 17 September 2016, then recurred monthly thereafter by agreement until terminated.
- II. The Applicant is the owner of and Landlord over the Property.
- III. The Short Assured Tenancy continued monthly by agreement after the initial term.
- IV. Following on a Notice to Quit that had been served, the Respondent left the Property on 15 December 2018, and in practical terms the tenancy ended then.
- V. The Respondent is in rent arrears of £1,523.08 as agreed between the Parties today.
- VI. The Respondent is liable for Damage costs occasioned attributable to her fault or negligence in the sum of £1094 as agreed between the Parties today.
- VII. The Respondent is liable for the costs of removal of her goods left in the Property at the end of the tenancy in the sum of £290 as agreed between the Parties today.
- VIII. The Application for payment of an agreed sum totalling £2,907.08 is accordingly granted.

### **Reasons for Decision & Decision**

I was satisfied that a decision could be made today on the undisputed facts as there was enough material before me to do so and having regard to the concessions and compromise reached between the Parties during the consideration of the claim. I had regard to the terms of the SAT which did not support parts of the claim, in doing so. The terms discussed and agreed are detailed within the body of this Decision. I was satisfied that the procedure was fair. I granted an Order for payment.

## 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.

Susan Christie

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Legal Member/Chair

7 October 2020

Date