



**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/21/0846**

**Re: Property at Flat 2, Invergowrie House, George Pirie Way, Dundee, DD2 1UA (“the Property”)**

**Parties:**

**Cindy Wigginton, Mr Don Mills, 4 St Luke's Rd, Dundee, DD3 0LD; 4 St Lukes Rd, Dundee, DD3 0LD (“the Applicants”)**

**Mrs Carole Arrenberg, Flat 2, Invergowrie House, George Pirie Way, Dundee, DD2 1UA (“the Respondent”)**

**Tribunal Members:**

**Ms H Forbes (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicants in the sum of £560.**

**Background**

1. This is an application received on 7<sup>th</sup> April 2021, made in terms of Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”). The Applicants are seeking an order for payment in respect of an unreturned tenancy deposit in respect of a tenancy agreement between the parties that commenced on 13<sup>th</sup> February 2020 and ended on 17<sup>th</sup> January 2021. The deposit of £600 was paid on 22<sup>nd</sup> January 2020. The Applicants are claiming £560, after deduction of £40 in respect of interior plasterwork damage to the Property. The Applicants lodged a copy of the tenancy agreement and a copy bank statement showing the payment of the tenancy deposit.
2. By email dated 26<sup>th</sup> April 2021, the Respondent made written representations. By email dated 29<sup>th</sup> April 2021, the Applicants made written representations and

lodged productions. By email dated 30<sup>th</sup> April 2021, the Respondent's representative lodged written representations.

3. A Case Management Discussion ("CMD") took place on 7<sup>th</sup> May 2021 by teleconference call. The Applicants were in attendance. The Respondent was not in attendance and was represented by Mr John Boyle, Solicitor. There was a further conjoined case between the same parties before the Tribunal – FTS/HPC/PR/21/0581. The CMD was continued to a further CMD to take place on 2<sup>nd</sup> June 2021 at 10am by teleconference. The reason for continuation of the CMD on 7<sup>th</sup> May 2021 was to allow Mr Boyle to take instructions and make investigations. Attendees were informed orally on 7<sup>th</sup> May 2021 of the date and time of the next CMD. The date and time of the next CMD was included within the Tribunal's CMD note, which was issued to parties. Notification letters were sent to attendees by email on 11<sup>th</sup> May 2021, informing them of the date and time of the next CMD.
4. A CMD took place on 2<sup>nd</sup> June 2021 by teleconference call. The Applicants were in attendance. The Respondent was not in attendance and was not represented. The hearing clerk communicated with the Respondent's representative's office and found that Mr Boyle was not available, as he was appearing in court. The Tribunal decided to continue matters to a further CMD, to allow participation by or on behalf of the Respondent.
5. The CMD note, which included the date of the next CMD, was issued to the Respondent's representative on 2<sup>nd</sup> June 2021. The Tribunal included within its CMD note a reminder to the Respondent that they should be aware that, if they chose not to appear or be represented at any further CMD, matters may be decided in their absence. A notification letter intimating the date of the next CMD was issued to the Respondent's representative on 4<sup>th</sup> June 2021.

### **The Case Management Discussion**

6. A Case Management Discussion ("CMD") took place on 17<sup>th</sup> June 2021 by teleconference call. The Applicants were in attendance. The Respondent was not in attendance and was not represented.
7. The Tribunal considered the terms of Rule 29 of the Rules. The Tribunal determined that the Respondent had been given reasonable notice of the time and date of the CMD and that the requirements of Rule 17(2) had been satisfied and it was appropriate to proceed with the application in the absence of the Respondent upon the representations of the Applicants and all the material before it.
8. The Applicants said they were opposed to any further delay. It was their position that the Respondent had ample opportunity to meet the requirements of the Tribunal, and that the Respondent was not taking the matter seriously. It was six months since the tenancy ended. Ms Wigginton said she had to take time off work to attend CMDs and the matter was causing stress to the Applicants. They wished to resolve the matter and move on.

9. The Tribunal had regard to the overriding objective contained in Rule 2 and 3, and the requirement to avoid delay, so far as compatible with the proper consideration of the issues. The Tribunal was concerned at the continuing failure of the Respondent to appear or be represented, despite the significant number of notifications of this and the previous CMD that had been made by the Housing and Property Chamber (“HPC”). The Tribunal was concerned there would be no appearance by or on behalf of the Respondent if a further CMD or hearing was fixed. The Tribunal considered the representations from the Applicants regarding delay and the consequent stress and inconvenience. The Tribunal decided it would not be in the interests of justice to delay consideration of the application further.
10. The Tribunal took into account that Rule 17 provides that a Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.
11. The Tribunal had regard to representations made by and on behalf of both parties. It was the Respondent’s position, through representations made by their Representative, that (i) the Applicants had an unpaid electricity bill of £900; (ii) the Applicants made alterations to the Property that were not approved by the Respondent; and (iii) the Property was left in a state of disrepair. The cost of repairing the damage and correcting the alterations was in excess of £600.
12. The Applicants’ position was that no payment was outstanding for electricity costs, and the only cost for damage that was attributable to them was a sum of £40 for repair of plasterwork following damage incurred by their removers. This sum had been agreed between parties. Upon leaving the Property, the Applicants had cleaned the Property and left it in a better state than that in which they found it. Consequently, the Applicants were seeking an order for payment in the sum of £560.

### **Findings in Fact**

13.
  - (i) Parties entered into a private residential tenancy agreement that commenced on 13<sup>th</sup> February 2020 and ended on 17<sup>th</sup> January 2021.
  - (ii) A tenancy deposit of £600 was paid by the Applicants on 22<sup>nd</sup> January 2020.
  - (iii) At the end of the tenancy, the tenancy deposit was not repaid to the Applicants.
  - (iv) The sum of £40 is due to the Respondents in respect of damage to plasterwork incurred by contractors acting on behalf of the Applicants.

- (v) The Applicants are due the sum of £560 as the balance of their deposit.

### **Reasons for Decision**

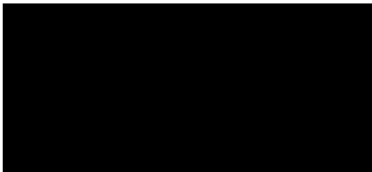
14. The Respondent is liable for the return of the deposit to the Applicants less the agreed sum of £40.

### **Decision**

15. An order for payment is granted in favour of the Applicants in the sum of £560.

### **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.**



**Helen Forbes**  
**Legal Member/Chair**

**17<sup>th</sup> June 2021**  
**Date**