



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/21/1670**

**Re: Property at 27 Fairview Circle, Danestone, Aberdeen, AB22 8ZQ (“the Property”)**

**Parties:**

**Mr Alexander Bruce, Mrs Ann Bruce, 5 Lusylaw Road, Banff, Aberdeenshire, AB45 1EW (“the Applicant”)**

**Mr Lewis Edwards, Mr Austin Wood, 3 Elmbank Court, Kinellar, Aberdeen, AB21 0SS; 3 Elmbank Court, Kinnellar, Aberdeen (“the Respondents”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Mike Scott (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that**

**Background**

The Applicant seeks a Payment Order against the Respondents for rent arrears of £3,477.40 which were allegedly lawfully due to the Applicant but unpaid under a tenancy between the parties. The Application was accompanied by a copy of the tenancy agreement and a rent statement together with correspondence exchanged between the parties.

The Application called for a Case Management Discussion (CMD) on 17 September 2021. The issues in dispute had been helpfully narrowed down to a single issue: Were

the Respondents liable for the rent arrears until 11 April 2020 as claimed by the Respondents or until 17 May 2020 as claimed by the Applicants?

The Respondents had confirmed that they had no defence to the claim for rent arrears up until 11 April 2020. Case management orders were also made at the CMD obliging parties to lodge submissions and evidence by 25 October 2021.

A Hearing date was duly then fixed. The Respondents subsequently applied to have that Hearing date postponed. That request was granted and parties were invited to let the Tribunal know of any further dates to avoid. No response was received from the parties.

A further Hearing date was then fixed. The Respondents then subsequently requested another postponement of that date. That request was refused on the basis it was not in the interests of justice for the Hearing to be postponed again by the Respondents when dates to avoid had been canvassed. The Respondents had subsequently emailed the Tribunal advising that in that case they wouldn't be attending the Hearing.

### **The Hearing**

The Application called for a Hearing by teleconference at 10 am on 7 December 2021. The Applicant, Mr Alexander Bruce was present. His wife, the Second Applicant, was now sadly deceased.

There was no appearance by or on behalf of the Respondents. The Respondents were clearly aware of the Hearing as they had unsuccessfully attempted to postpone today's proceedings.

The Tribunal also noted that the Respondents had failed to follow through on the Direction made at the CMD. They had not lodged any submissions in support of their position but had instead only corresponded with the Tribunal about postponing the Tribunal. The Tribunal decided that it was fair to proceed in the absence of the Respondents.

Mr Bruce also had available on the call a witness: Mr Callum Sinclair of Stonehouse Lettings.

The Tribunal began by confirming with Mr Bruce that notwithstanding the non-attendance of the Respondents, the Tribunal would still be critically examining the basis of the Application.

The Tribunal raised with Mr Bruce why it was he said the Respondents should be liable for rent arrears up until 17 May 2020 rather than 11 April 2020.

Mr Bruce spoke to the Respondents being asked to leave on 11 April 2020 but never actually returning the keys until they were retrieved from the Property during a planned inspection on 17 May 2020. He spoke to many unsuccessful attempts made by him and his letting agent to get a hold of the Respondents to try and secure the return of the keys but being met with non-cooperation. Mr Bruce advised that he could not get the keys and begin the process of re-letting the Property until 17 May 2020.

Mr Bruce also spoke to the extensive efforts made by him to corresponded with the Respondents to try and resolve matters applicably. Mr Bruce had clearly attempted to offer the Respondents a payment plan and had corresponded with them in a dignified and business-like manner. That style of communication was not reciprocated.

The Tribunal was particularly struck by one email sent by the Respondents to Mr Bruce in which they told him to "*Settle pettle (sic)... you are not my number one priority..*" This was in response to Mr Bruce voluntarily trying to offer the Respondents the benefit of a payment plan for the accrued arrears.

There were also numerous other communications with the Respondents in which the Tribunal was less than impressed with the Respondents' style of communication. They had also appeared to call the Applicants' letting agents "*A bunch of idiots*" which appeared to the Tribunal to be an entirely unfounded criticism. The Respondents also appeared to make more effort challenging the Applicants about vague breaches of "*data protection*" rather than addressing the offers made of a payment plan for their rent arrears.

Mr Bruce also pointed out an email sent by the Respondents which claimed that they had left the Property on 14 April 2020. This stood in contrast to what the Respondents had stated to the Tribunal at the CMD which was that they had left the Property on 11 April 2020.

The Tribunal heard from Mr Sinclair and carefully questioned him about why the Respondents should be liable for rent arrears until 17 May 2020.

Mr Sinclair is the Senior Portfolio Manager of Stonehouse Lettings and was familiar with the issues of the case. He confirmed that he calculated that there were arrears of rent lawfully due of £3,477.40 which ought to have been paid to the Applicant but which were in arrears.

Mr Sinclair spoke to extensive efforts being made to secure the return of the keys from the Respondents. Mr Sinclair had made allowances for covid restrictions and had simply asked the Respondents to confirm that they had left the Property and put the keys through the letterbox. No response was received and the Applicants could not confirm that the Respondents had left and secure the keys until they carried out an organised inspection on 17 May 2021.

It seemed to the Tribunal that had the Respondents been more cooperative and less confrontational with the Applicants then they may very well have reduced their liabilities to the Applicant for rent to an earlier date. As it was, their failure to act appropriately regarding the matters meant that the Applicants were entitled to assume that the Respondents had not left the Property until they carried out an inspection on 17 May 2020.

The Tribunal found both Mr Bruce and his witness Mr Sinclair to be entirely credible and reliable. What they said was comfortably supported by the documentary evidence before the Tribunal.

Having heard evidence and having adjourned to consider its decision, the Tribunal made the following findings in fact.

### **Findings in Fact**

- I. *The parties entered into a tenancy at the Property which commenced on 7 March 2018;*
- II. *The Applicants were the landlords and the Respondents were the tenants;*
- III. *The contractual monthly rent due was £695.00;*
- IV. *The Respondents fell into rent arrears from around August 2019;*
- V. *The Applicants made reasonable efforts to assist by offering a repayment plan;*
- VI. *The Respondents treated the Applicants with contempt and failed to follow through on these offers and instead acted in a childish and confrontational manner;*
- VII. *The Respondents were asked to leave the Property by 11 April 2020;*
- VIII. *The Respondents failed to confirm that they had left the Property or adequately confirm that they had returned the keys;*
- IX. *The Applicants were entitled to assume that the Respondents were still in the Property until they carried out a formal inspection on 17 May 2020;*
- X. *The Respondents have themselves been inconsistent as to the date on which they say they vacated the Property;*

### **Reasons for Decision**

Having made the above findings in fact, the Tribunal unanimously decided to grant the Application and make a payment order in favour of the Applicants against the Respondents in the sum of £3,477.40 together with interest on that sum at the rate of four per cent per annum from today's date until 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.**

**Legal Member: Andrew McLaughlin**

**Date: 7<sup>th</sup> December 2021**