



**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/19/0480**

**Re: Property at 20 Marywell Brae, Kirriemuir, Angus, DD8 4BJ (“the Property”)**

**Parties:**

**Mr James Smith and Mrs Victoria Smith, Upper Kinnadie, Auchnagatt, Ellon,  
Aberdeenshire, AB41 8XJ (“the Applicant”)**

**Ms Jenny Lilja, 45 Knowehead Crescent, Kirriemuir, Angus, DD8 5AD (“the  
Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined to make an order for payment in the sum of Two thousand  
five hundred and eighty one pounds and fifty four pence (£2,581.54) against the  
Respondent**

**Background**

- 1 By application dated 11 February 2019 the Applicants sought an order for payment of outstanding rent arrears against the Respondents. In support of the application the Applicants submitted the following documents:-
  - a. Tenancy Agreement between the Applicants and Respondent dated 7<sup>th</sup> May 2012;
  - b. Rent account from 7 September 2017 to 19 June 2018;
  - c. Copy invoices for repairs;
  - d. Copy feenote from Thorntons Solicitors dated 20<sup>th</sup> December 2018;
  - e. Copy letter from Thorntons Solicitors to the Respondent dated 10<sup>th</sup> October 2018;
  - f. Photographs of the Property dated 6<sup>th</sup> July 2018.

- 2 By Notice of Acceptance of Application dated 25<sup>th</sup> February 2019, the Legal Member with delegated powers of the Chamber President intimated that there were no grounds for rejection of the application. A Case Management Discussion was therefore assigned for 11<sup>th</sup> April 2019.
- 3 A copy of the application together with supporting documentation and notification of the Case Management Discussion was served on each Respondent by Sheriff Officers on 20<sup>th</sup> March 2019.

#### The Case Management Discussion

- 4 The Case Management Discussion took place at the Dundee Carers Centre on 11<sup>th</sup> April 2019. The Applicants were present. The Respondent was not present.
- 5 The Applicants confirmed that they were seeking the sum of £3122.74 as stated in the application. The Respondent had not been in touch and had not made any payment.
- 6 The Tribunal indicated that the Tenancy Agreement did not provide for the Applicants to recover the legal fees sought in respect of the work carried out by Thorntons Solicitors. It therefore appeared to the Tribunal that the sum may not be due by the Respondent. The Tribunal queried whether the Applicants wished to seek legal advice on this point, in which case the Case Management Discussion could be postponed to a later date. The Applicants advised that they would be content to accept an order for payment in respect of the repairs costs and rent arrears if that would bring the process to an end for now. The Tribunal noted that they could submit a further application at a later date if they did consider they were in a position to recover these costs.

#### Findings in Fact

- 7 The Applicants entered into a Tenancy Agreement with the Respondent dated 7<sup>th</sup> May 2012 in respect of the Property.
- 8 In terms of Clause 4 of the Tenancy Agreement the Respondent undertook to pay rent at the rate of £500 per month.
- 9 The tenancy between the parties was terminated on 6<sup>th</sup> July 2018. As at the date of termination rent arrears in the sum of £1500 were outstanding. The Respondent is liable for payment of the outstanding arrears in terms of Clause 4 of the said Tenancy Agreement.
- 10 In terms of Clause 9 of the said Tenancy Agreement the Respondent undertook to maintain the Property in good and clean condition and repair throughout the period of let. The Respondent is in breach of this obligation as

evidenced by the photographs produced by the Applicants which are accepted as an accurate representation of the Property at the termination of the lease and the copy invoices produced which are accepted as the costs incurred by the Applicants in restoring the Property to a reasonable condition having regard to wear and tear. The Applicants are therefore entitled to the costs of repairs or replacement items in the sum of £1081.54.

- 11 The Tenancy Agreement does not provide for the Applicants to recover the legal fees incurred in pursuing the debt prior to submitting the Application. The Applicants are therefore unable to claim for these costs.

#### Reasons for Decision

- 12 Having considered the verbal and written representations from the Applicants the Tribunal was satisfied at the Case Management Discussion that it was able to make sufficient findings to determine the case without a hearing and that to do so would not be prejudicial to the interests of the parties. The Tribunal was satisfied that the Respondent had received proper and reasonable notification of the Case Management Discussion by virtue of service of the papers by Sheriff Officers. She had not sought to dispute the terms of the application and had not taken the opportunity to attend the Case Management Discussion.
- 13 The Tribunal accepted based on its findings in fact that the sum of £2,581.54 is lawfully due by the Respondent by virtue of the terms of the Tenancy Agreement between the parties and the rent statement, photographs and copy invoices produced by the Applicants. The submissions put forward by the Applicants were entirely credible and the Respondent had not sought to counter same. The Tribunal could not however be satisfied that the Respondent was liable for the legal fees incurred as the provisions of the Tenancy Agreement did not make provision for recovery of such costs.
- 14 The Tribunal therefore determined to make an order for payment in the sum of £2,581.54.

#### 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.**

**Ms Ruth O'Hare**

**11 April 2019**

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**Legal Member/Chair**

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**Date**