



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 70(1) of the Private Housing
Tenancies (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/23/0055

Re: Property at 77 Farne Court, Kirkcaldy, KY2 6EH (“the Property”)

Parties:

Mr Iain Gauld, Lincroft House, Golf Course Road, Blairgowrie, PH10 6LF (“the Applicant”)

**Mr Calum Robertson, Miss Georgann Allison Penman, UNKNOWN, UNKNOWN;
Haggerston Caslte Holiday Park, Beal, Haggerston, TD15 2PA (“the Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondents)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of Five thousand five hundred and eighty one pounds and seventy five pence (£5581.75) Sterling

Background

- 1** By application to the Tribunal dated 5 January 2023 the Applicant sought an order for payment against the Respondents in respect of unpaid rent arrears. In support of the application the Applicant submitted a copy of the tenancy agreement between the parties and a rent statement.
- 2** By Notice of Acceptance of Application the Legal Member with delegated powers from the Chamber President determined that there were no grounds upon which to reject the application. A Case Management Discussion was therefore assigned and a copy of the application paperwork was served upon the Respondents by Sheriff Officers.

- 3 The first Case Management Discussion took place on 27 March 2023. There was no attendance by either party. The Tribunal therefore adjourned the Case Management Discussion and directed the Applicant to confirm if they wished to proceed with the application. The Respondents were also invited to submit written representations in response to the application. Later that same day the Tribunal received an email from the Applicant's representative, Mrs Inglis of Belvoir Lettings, apologising for missing the Case Management Discussion.
- 4 On 25 May 2023 the Tribunal received an email from the second named Respondent Miss Penman. In summary Miss Penman advised that she had stopped paying rent due to the condition of the property. She further advised that the first named Respondent Mr Robertson had left the property approximately six months before the tenancy ended and should therefore be removed from the proceedings.
- 5 On 8 June 2023 the Tribunal received an email from the Applicant's representative Mrs Inglis. In summary Mrs Inglis advised that there was no evidence of the Respondents having reported repairs, or intimated that they were withholding their rent. Furthermore Mr Robertson had not notified them that he had left the property. Mrs Inglis submitted documentation in support of her representations, including email correspondence between her firm and the Respondents regarding the rent arrears which included offers of payment from Miss Penman. There was no mention in said correspondence of outstanding repairs. Mrs Inglis also submitted an Electrical Installation Condition Report dated 17 August 2021 which confirmed the installations within the property to be satisfactory.
- 6 The second Case Management Discussion took place on 9 June 2023. The Applicant was represented by Mrs Inglis. Neither Respondent was present. Having heard from Mrs Inglis, and taking into account Miss Penman's written representations, the Tribunal determined to fix a hearing. A Direction was issued to parties regarding the preparation for the hearing. This included a requirement for the Respondents to submit evidence to support their disrepair claim, as well as confirmation of their arrangements for withholding rent and notification of repairs.
- 7 There was no response received from the Respondents to the Direction. Mrs Inglis submitted a further email on 20 July 2023 which included invoices for works carried out at the end of the tenancy and photographs of the condition of the property.
- 8 The hearing took place on 4 September 2023. Neither party was in attendance. The Tribunal noted that Mr Robertson had not received notification of the hearing. Having taking that into account, alongside the lack of attendance by the other parties, the Tribunal determined to adjourn the hearing. The Tribunal noted that no response had been received from the Respondents to the Direction, and that there were no witnesses for the Applicant. Accordingly the Tribunal determined to fix a further Case Management Discussion.

- 9 Notification of the Case Management Discussion was intimated on both Respondents. In Mr Robertson's case intimation was by way of service by advertisement on the Tribunal's website on the basis that his whereabouts were unknown.

The Case Management Discussion

- 10 The Applicant was represented at the third Case Management Discussion by Mrs Inglis. Neither Respondent was present. The Tribunal heard submissions from Mrs Inglis in support of the application, based on the written representations that she had submitted on the Applicant's behalf. Mrs Inglis confirmed that she was instructed to seek an order for payment in the sum sought.

Findings in Fact

- 11 The Applicant and the Respondents entered into a tenancy agreement dated 26 November 2019.
- 12 In terms of Clause 8 of the said tenancy agreement the Respondents undertook to make payment of rent in the sum of £565 per month.
- 13 The tenancy between the parties terminated on 18 March 2022.
- 14 As at the date of termination rent arrears in the sum of £6146.75 were outstanding.
- 15 The Applicant has received the tenancy deposit in the sum of £565 which has been applied to the outstanding rent arrears.
- 16 The Respondents are due to pay the Applicant the sum of £5581.75 under the terms of the tenancy agreement between the parties.

Reasons for Decision

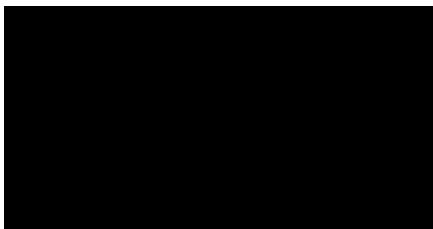
- 17 The Tribunal was satisfied that it had sufficient information upon which to reach a determination of the application at the Case Management Discussion and that it would not be prejudicial to the parties. The Tribunal did not see any requirement to fix a further hearing in the matter. The Respondents had been notified of the Case Management Discussion and had failed to attend. They had also failed to submit any further representations, or evidence, to support the position put forward by Miss Penman despite having been given the opportunity to do so.
- 18 The evidence submitted by the Applicant in the form of email correspondence between the Applicant's representative and Miss Penman did not highlight any issues of disrepair, as had been alleged in her email of 25 May 2023. She had not sought in said correspondence to rely upon this as a reason for not paying rent, in fact she had apologised and had made repeated offers of payment.

There was also nothing to evidence her claim that Mr Robertson should no longer be a party to the application. He was a joint tenant and neither he, nor Miss Penman, had produced anything to confirm he had given notice to terminate his share in the tenancy. Accordingly the Tribunal was satisfied that he was jointly and severally liable for the arrears outstanding at the end of the tenancy.

- 19** Given the lack of supporting information from the Respondents, the Tribunal accepted the Applicant's position which it had no reason to doubt on the basis of the evidence before it and the submissions from Mrs Inglis. The Tribunal was satisfied that the Respondents were liable to pay rent of £565 per month under the terms of the tenancy agreement, and had failed to do so, resulting in arrears of £5581.75.
- 20** The Tribunal therefore made an order in the sum of £5581.75.

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/Chair

12 December 2023

Date