



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Regulations”)**

**Chamber Ref: FTS/HPC/CV/23/2602**

**Re: Property at 56 Bath Street, Kilmarnock, KA3 1HY (“the Property”)**

**Parties:**

**Elaine Withers, 83A London Road, Kilmarnock, KA3 7BT (“the Applicant”)**

**Mr Emilio Javier Vega Gonzalez, Jayde Rae, 24 Lauder Court, Kilmarnock, KA3 7QH; 24 Lauder Court, Kilmarnock, East Ayrshire, KA3 7QH (“the Respondent”)**

**Tribunal Members:**

**Nicola Weir (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 by the Respondent in the sum of £3,576.62 should be made in favour of the Applicant, together with interest thereon at the rate of 8%.

**Background**

1. By application received on 3 August 2023, the Applicant applied to the Tribunal for a payment order in respect of rent arrears and costs associated with property damage in the sum of £3,576.62. Supporting documentation including a copy of the tenancy agreement, a statement of rent account and in respect of the alleged property damage were also submitted.
2. On 21 September 2023, a Legal Member of the Tribunal with delegated powers from the Chamber President issued a Notice of Acceptance of Application in terms of Rule 9 of the Regulations.

3. On 20 October 2023, a copy of the application and supporting documentation was served on both Respondents by Sheriff Officer. Parties were notified of the date, time and location of the Case Management Discussion (“CMD”) and notified that any written representations in respect of the application should be submitted to the Tribunal by 9 November 2023. No written representations were received from the Respondent prior to the CMD.

### **Case Management Discussion**

4. The CMD took place by telephone conference call on 28 November 2023 at 2pm, attended only by Mr John McKeown of Jackson Boyd Lawyers, the Applicant’s representative. The Legal Member delayed the commencement of the CMD for around 5 minutes to give an opportunity for either of the Respondents to join the CMD late but they did not do so.
5. Following introductions and introductory remarks by the Legal Member, Mr McKeown was asked to address the application. He made reference to the supporting documentation lodged with the application. He confirmed that the Property had been let out before this tenancy but that, prior to the commencement of this tenancy, the Property had been re-painted and was in good condition throughout, as shown in the check-in documentation lodged with the Tribunal which had been signed and dated by both tenants in acceptance of this. Mr McKeown explained that, due to the Respondent abandoning the tenancy around 8 November 2022, without giving notice to the Applicant’s letting agents, they were not involved in the check-out process. He made reference to the check-out documentation also lodged, the contents of which show the contrasting condition of the Property as it had been left by the Respondents. He also referred to the breakdown of costs incurred by the Applicant in repairing, cleaning and replacing items within the Property after it was vacated, together with the copy receipts and invoices, also lodged. These costs amounted to £4,234.48. Given that the Respondent had occupied the Property for around two and a half years, the Applicant was prepared to deduct 20% from the total costs, to reflect reasonable wear and tear which occurs in a tenancy, bringing the repair costs claimed down to £3,387.58. In addition, rent arrears are claimed, being the sum of £764.04 owing when the tenancy ended on 8 November 2022, as shown in the rent statement produced. Mr McKeown confirmed that the Applicant’s letting agent had apportioned the rent owing up to that date. They had only discovered that the Respondent had abandoned by speaking to neighbours. The letting agents subsequently recovered the full amount of the tenancy deposit of £575 from the tenancy deposit scheme and accordingly, this sum has been set against the rent arrears and other costs, bringing the total balance owing down to £3,576.62, which is the sum sought. Mr McKeown made reference to clause 18 of the tenancy agreement in support of the Applicant’s position that the Respondent is due to pay for the repair costs, etc claimed. He also made reference to the fact that the Respondent has been served with all of the supporting documentation referred to, in advance of the CMD, and has not opposed anything claimed, despite having ample opportunity to do so. In response to questions from the Legal Member, Mr McKeown advised that he is unaware of there having been any background issues with

the tenancy. He advised that Notice had, however, been served by the Applicant on the basis of her intention to sell the Property (which she now has). His understanding is that the Respondent vacated the Property during the notice period so eviction proceedings had not been required. Sheriff Officers had been employed to trace the Respondent's forwarding address and had managed to do so. Mr McKeown advised that there had been no communications with the Respondent after they abandoned the Property, nor any payments received from them towards the rent arrears or other costs. Emails had been issued to them using their email address but the Respondent had not made contact. Mr McKeown submitted that there was sufficient information before the Tribunal to enable a payment order to be granted today.

### **Findings in Fact**

1. The Applicant is the former owner and landlord of the Property.
2. The Respondents were the former joint tenants of the Property by virtue of a Private Residential Tenancy which commenced on 30 April 2020.
3. The Respondents vacated the Property, without notice, on or around 8 November 2022.
4. The rent in terms of the tenancy was £575 per calendar month.
5. When the Respondents vacated, there were rent arrears owing in the sum of £764.04.
6. The Applicant has incurred costs amounting to £4,234.48 in respect of property damage and deterioration, given the condition of the Property on vacation by the Respondents.
7. The Respondents are liable to the Applicant in respect of the net balance of the rent arrears owing and the repair and other property costs incurred, in terms of the tenancy, amounting to £3,576.62.
8. The Respondents have been called upon to make payment of these arrears and costs but have failed to do so.
9. The sum of £3,576.62 is due and resting owing by the Respondents to the Applicant.
10. The Respondents have not opposed this application.

### **Reasons for Decision**

1. The Tribunal considered all of the background papers, including the application and supporting documentation and the oral submissions made by the

Applicant's representative, Mr McKeown, at the CMD. The Respondents did not lodge any written representations nor attend the CMD, having been properly and timeously notified of same.

2. The Tribunal considered that there was nothing to contradict the information from the Applicant and therefore no requirement to continue the application to an Evidential Hearing. The Tribunal was satisfied that the sum of £3,576.62 was due and resting owing in respect of unpaid rent due to the Applicant and repair and other costs associated with the condition in which the Property had been left by the Respondents. The Tribunal had noted the terms of the detailed breakdowns of the figures and calculations provided in the supporting documentation and the vouching also supplied in support of the various costs claimed. The Tribunal also noted that the Applicant had deducted a proportion of the property costs claimed in terms of wear and tear and the Tribunal considered that proportion to be a fair and reasonable one in the circumstances. So too had the tenancy deposit recovered by the Applicant been deducted from the overall sum due.
3. The Tribunal concluded that, in the circumstances, an order in the sum sought could properly be made at the CMD today.

### **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.**

Nicola Weir

Legal Member/Chair

28 November 2023  
Date