

**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/22/4397**

**Re: Property at 1 Bow Butts, Church Street, Galashiels, TD1 3JL (“the Property”)**

**Parties:**

**Mr Alan Gill, Kirsty Gill, Bankhouse Nursery, Garngour Road, Lesmahagow, ML11 0EU (“the Applicant”)**

**Mr Sean Surtherland, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Member:**

**Gabrielle Miller (Legal Member)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant is entitled to an order for payment for to £8050 (EIGHT THOUSAND AND FIFTY POUNDS).**

**Background**

1. An application was received by the Housing and Property Chamber dated 12<sup>th</sup> December 2022. The application was submitted under Rule 111 of The First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”). The application was based on the Respondent not maintaining rent payments.
2. On 13<sup>th</sup> April 2023 all parties were written to with the date for the Case Management Discussion (“CMD”) of 19<sup>th</sup> May 2023 at 10am by teleconferencing. The letter also requested all written representations be submitted by 4<sup>th</sup> May 2023. This CMD had to be postponed for an internal reason arising within the Housing and Property Chamber Tribunal.
3. On 31<sup>st</sup> July 2023 all parties were written to with the date for the Case Management Discussion (“CMD”) of 25<sup>th</sup> August 2023 at 10am by teleconferencing. This CMD had to be postponed as the Recorded Delivery letter is not able to be delivered on 4<sup>th</sup> August 2023. A new date was set for 25<sup>th</sup> October 2023 at 10am by teleconferencing.

4. On 31<sup>st</sup> July 2023, the Applicants emailed the Housing and Property Chamber advising that the This CMD had to be had to be postponed for an internal reason arising within the Housing and Property Chamber Tribunal.
5. On 17<sup>th</sup> October 2023, the Applicants emailed the Housing and Property Chamber including further evidence and costs.
6. Service by Advertisement was undertaken upon the Respondent from 20<sup>th</sup> September 2023.
7. A CMD was held 25<sup>th</sup> October 2023 at 10am by teleconferencing. The Applicants were present and represented themselves. The Respondent was not present or represented. Mr Gill spoke on behalf of both Applicants. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the CMD. Mr Gill told the Tribunal that there has been no contact from the Respondent since he gained possession of the Property again on 22<sup>nd</sup> July 2023. Over the years the Respondent has emailed the Applicant frequently but has heard nothing from him since he left the Property. There have been no payments and no offers to pay the arrears. Mr Gill did not know about any Universal Credit Housing Element payments. The Respondent had told him that he had been claiming benefits in January 2023 but there has been no information about entitlement to Housing Element and nothing has been forthcoming. Mr Gill said that he has requested that the deposit be returned to the Applicants from the deposit scheme. The Respondent has disputed that the deposit should not be returned to him so it is being considered by the deposit scheme arbitration. Mr Gill said that the decision can take 10-12 weeks. He was told this information within the last two weeks. The Tribunal asked for clarification on the amount sought. Mr Gill said that he was seeking £6500 for the rent arrears. The Tribunal noted that this is not supported by a rent statement. This needed to be produced to evidence the arrears due. Mr Gill said that he had that and could forward it to the Tribunal. The Tribunal noted that he could send it in but that notice needed to be given to the Respondent, even when he has been served by Service By Advertisement. The Tribunal considered the most appropriate way forward was to continue to another CMD to allow the amount to be amended. The Applicants should also add any other amounts that they wish to include. The papers had detailed cost due to joinery. The Tribunal assumed this to be an amendment as it was notified more than 7 days prior to the CMD and was evidenced with an invoice. If there are further costs they should be submitted with evidence. Reference had been made to decorating after the Respondent had left. Mr Gill said that he and his wife had decorated the Property because it was left in very poor condition. This was beyond end of tenancy wear and tear. The Tribunal noted that if the costs for this were to be added then this would need to be evidenced with receipts for paint and photos of the damage to the Property. Any further items that the Applicants wish to include should be notified to the Tribunal no less than 14 days before the next CMD with appropriate evidence. The figure claim should be amended so that it is clear to the Respondent what amount is being sought. The CMD was continued to allow the Applicants to amend the amount sought. A direction was issued.

8. On 26<sup>th</sup> October 2023, the Applicants emailed the Housing and Property Chamber increasing the amount sought to £8600. This amount included the amended rent arrears due of £6500 and joinery fees of £2100. Attached were emails to the Respondent requesting payment of the outstanding rent and an invoice from a joiner for work undertake in the Property.
9. On 26<sup>th</sup> November 2023, the Applicants emailed the Housing and Property Chamber to advise that they had been returned the deposit of £550 from the deposit scheme.
10. On 5<sup>th</sup> December 2023, the Respondent emailed the Housing and Property Chamber asking what was the meaning of the process and that he had asked several times to pay back the amount due in instalments but had no reply from the Applicants. The Respondent was written to by the Housing and Property Chamber on 12<sup>th</sup> December 2023 advising him of the date and the time of the forthcoming CMD and attaching a link for the Service by Advertisement.
11. On 5<sup>th</sup> December 2023 all parties were written to with the date for the CMD of 31<sup>st</sup> January 2024 at 10am by teleconferencing. Service by Advertisement was undertaken upon the Respondent from 5<sup>th</sup> December 2023.

#### The Second Case Management Discussion

12. A CMD was held 31<sup>st</sup> January 2024 at 10am by teleconferencing. The Applicants were present and represented themselves. The Respondent was not present or represented. Mr Gill spoke on behalf of both Applicants. The Tribunal proceeded in terms of Rule 29 of the Rules. The Respondent did not make representations in advance of the CMD.
13. Mr Gill said that he had not heard anything further from the Respondent. He said that there had been a number of offers during the tenancy but none of the offers have resulted in payment. Mr Gill had written to the Respondent each month to inform him of the outstanding level of the arrears. The emails were submitted by Mr Gill up to and including the last payment due which showed the arrears to be £6500. Mr Gill believes that the Respondent had moved out of the Property in March or April 2023 but did not give notice to him. Mr Gill changed the locks on 22<sup>nd</sup> July 2023. The Applicants have charged the Respondent for payments up until and including July 2023 as there was no notice given to them as to when he left the Property and they did not take possession until the end of July 2023.
14. Mr Gill confirmed that the repairs undertaken in the Property were to remedy the damage made by the Respondent. The work has been done to return the Property to the state that it was in when the Respondent moved into it. The Applicants have had to spend a lot of their own time and money beyond the joinery work to clean and decorate the Property. They have not claimed for these expenses.

15. The total amount being sought is £8600. However, the Applicants have had the deposit of £550 returned to them. This is to address rent arrears. This reduces the amount outstanding to £8050.
16. The Tribunal was satisfied that the outstanding amount for £8050 was due to the Applicants by the Respondent and that it was appropriate to grant an order accordingly.

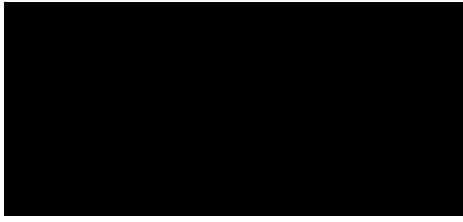
#### Findings and reason for decision

17. A Private Rented Tenancy Agreement commenced 1<sup>st</sup> February 2021.
18. The Respondent persistently failed to pay his rent charge of £550 per month. The rent payments were due to be paid on the first day of each month. The arrears total £6500. The Respondent has offered to make payments but there have been no payments made to the outstanding amount.
19. As a result of the damage the Respondent caused to Property the Applicants had to employ a joiner who undertook the repairs which cost £2100. This was to return the Property to the position it was in when the Respondent first let it.
20. The Applicants have been returned the deposit of £550 from the deposit scheme to address rent arrears. This has been deducted from the amount that the Applicants are seeking from the Respondent.
21. The Respondent contacted the Housing and Property Chamber on 5<sup>th</sup> December 2023. He was given information as to the date of the next CMD and that he should contact for the case papers and teleconference dial in details. No further contact was made to the Housing and property Chamber by the Respondent.
22. The total amount sought is £8050. The Tribunal is satisfied that this is owed to the Applicants from the Respondent.

#### Decision

23. The Tribunal found that the Applicants were entitled to be granted an order for payment amounting to £8050 (EIGHT THOUSAND AND FIFTY POUNDS).

**NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.**



**31<sup>st</sup> January 2024**

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**Legal Member**

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**Date**