



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 (“the 2014 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)**

**Chamber Ref: FTS/HPC/CV/23/3347**

**Re: Property at Flat 1 15 Colonsay Close, Edinburgh, EH5 1BT (“the Property”)**

**Parties:**

**ASL Property, Rosemount Cottage, Braeface Road, Banknock, FK4 1UE  
 (“the Applicant”)**

**Macnabs LLP, 10 Barossa Place, Perth, PH1 5JX  
 (“the Applicant’s Representative”)**

**Moira Robertson and Shawn Harris, Flat 1 15 Colonsay Close, Edinburgh, EH5  
 1BT (“the Respondent”)**

**Tribunal Members:**

**Ms Susanne Tanner KC (Legal Member) and Mrs Helen Barclay (Ordinary  
 Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
 tribunal”) determined that the Respondents should pay to the Applicant the sum  
 of ONE THOUSAND FIVE HUNDRED AND TEN POUNDS (£1,510.00) STERLING;  
 and made an Order for Payment in respect of the said sum.**

## **Procedural background**

1. The Applicant's Representative made an application to the tribunal on 21 September 2023 in terms of Section 16 of the Housing (Scotland) Act 2014 ("the 2014 Act") and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicant seeks an order for payment in respect of rent arrears for the Respondent's tenancy of the Property.
3. The Applicant provided the following documents in support of the amended Application:
  - 3.1. Tenancy agreement
  - 3.2. Rent statement.
4. The tribunal's administration obtained a copy of the Title Sheet for the Property which showed the registered proprietor from 20 January 2009 as Stephen Donachy, Nettles Cottage, Allandale, Bonnybridge.
5. Further information was requested by the tribunal from the Applicant's Representative and provided, in an amended bundle of supporting documents, including: evidence of Title and interest and consent from the registered proprietor of the Property to rental of the property through ASL Property, a partnership.
6. The application was accepted for determination.
7. The tribunal sent letters of notification to all parties with the date, time and arrangements for joining the Case Management Discussion ("CMD") in relation to the Application.
8. On 25 January 2024, the Applicant provided an updated rent statement and requested to amend the Application to seek the increased sum of £2,860.00, in terms of Part 1, Rule 13 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017

## **CMD: 13 February 2024, 1000h, teleconference**

9. The Applicant's Representative attended. The first Respondent attended.
10. The sum claimed was amended to £2860.00 on the basis of the updated rent statement which had been lodged.

11. The sum claimed was accepted in part by the Respondent and otherwise disputed. In particular she accepted that she had intentionally withheld a month's rent of £1190 which was due on 14 September 2022. She disputed the other rent arrears, stating first that she did not know why there were underpayments on other dates, including large underpayments in October and November 2022. She thought it may be something to do with Universal Credit and the fact that her oldest son had become 16 around that time and ceased being a dependent. She said that she had been sent statements about Universal Credit payments but did not have them with her at the CMD. She also suggested that the Applicant may have retained sums from rent payments in relation to a boiler issue. The second area of dispute related to rent increase of £20 per month from October 2022. The Respondent accepted that she had received advance notification of the rent increase (a copy of the form was submitted during the CMD by the Applicant's Representative and provided to the tribunal members and the Respondent). However, she said that she had thought at the time of the increase that there had been a Scottish government 'ban' on any rent increases and she had disputed it with the Applicant and then decided not to pay the increased sum for that reason. She had not taken any advice on this. She had not informed the DWP at any time that the rent had been increased or asked for an increase in the Universal Credit payments. She agreed with reference to the rent statement that there have been 16 payments since the rent increase (from October 2022 until January 2024), each of which has been at least £20 short of the increased rent amount of £1210.00.
12. Following questions from the tribunal about Universal Credit payments and whether there had been any deductions from rent by the Applicant, the Applicant's Representative requested an adjournment to seek further information from her client. She said that the Applicant had requested direct payment of Universal Credit following rent arrears but this had been refused and as far as she was aware all rent payments had come from the Respondent's bank account. The only payment she ever received from Universal Credit was labelled as such. The Representative stated that the Applicant had not deducted sums from rent received and that the amount shown on the schedule were the amount paid. The Applicant's Representative was unable to provide documentary evidence during the CMD as her client was abroad and did not have access to all her documents. The Applicant's Representative indicated that she would be prepared to amend the application to seek only the rent arrears due in respect of the September 2022 missed payment of £1190.00 and 16 months of the £20 underpayment following the rent increase (£320.00), totalling £1510.00 and that a further application could be submitted in respect of other rent arrears for the tenancy, after further investigations had been undertaken and the tenancy had ended.
13. The tribunal agreed the application could be amended to seek the total sum of £1510.00 in respect of the said rent arrears. The Respondent accepted that

£1190.00 of that amount was due to the Applicant in respect of the month she had failed to pay rent in September 2022; and in relation to the £20 rent increase from October 2022, she said that if the Applicant was entitled to that and it was included in a payment order, she would inform the DWP who deal with rent as part of their Universal Credit.

#### **14. Findings-in-Fact**

- 14.1. The Applicant partnership has the consent of the registered proprietor to let the Property under a private residential tenancy.
- 14.2. There is a private residential tenancy agreement between the Applicant and the Respondents for the Property.
- 14.3. The start date of the tenancy was 12 October 2020.
- 14.4. The Application to the tribunal was made on 21 September 2023.
- 14.5. The Respondents owe the Applicant rent of £1190.00 which was due to be paid on 14 September 2022 and remains unpaid.
- 14.6. The Respondents owe the Applicant rent in the sum of £320.00, representing a £20 per month rent increase to £1210.00 per month from 14 October 2022 to 12 January 2024 (16 months), which remains unpaid.
- 14.7. The Respondents continues to reside in the Property.
- 14.8. An order for eviction of the Respondents was made in related proceedings on 13 February 2024.

#### **Discussion**

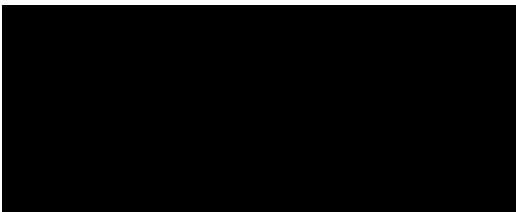
15. As the tribunal was satisfied that the Respondents owe £1,510.00 to the Applicant by way of rent arrears from 14 September 2022 (£1190.00) and from 14 October 2022 to 12 January 2024 in respect of the rent increase from 14 October 2022 (16 months at £20, totalling £320.00), the tribunal made an Order for Payment in respect of the rent arrears in the sum of £1,510.00.

16. It is noted that the Applicant intends to make a fresh application to the tribunal in respect of other rent arrears which are in dispute, following further investigations

and after the end of the tenancy. An eviction order was made in related proceedings on 13 February 2024.

### **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.**



**13 February 2024**

**Ms. Susanne L M Tanner K.C.  
Legal Member/Chair**