

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of The Private Housing (Tenancies) Act 2016

Chamber Ref: FTS/HPC/CV/23/4250

Re: Property at 25 Torbeith Gardens, Hill of Beath, Fife, KY4 8DU (“the Property”)

Parties:

**Ms Lorna Ross, 35 Commercial St, Markinch, Fife, KY7 6DE (“the Applicant”)
and**

**Mr Kenneth Mackinnon, 5 Torbeith Gardens, Hill of Beath, Fife, KY4 8DU (“the
First Respondent”) and**

**Miss Chloe Rogers, 5 Torbeith Gardens, Hill of Beath, Fife, KY4 8DU (“the
Second Respondent”)**

Tribunal Members:

**G McWilliams- Legal Member
E Williams- Ordinary Member**

Decision in absence of the Respondents

1. The Tribunal, having considered the evidence and submissions, makes an order for payment of the sum of £2302.00 by the First Respondent Mr Kenneth Mackinnon and the Second Respondent Miss Chloe Rogers, jointly and severally, to the Applicant Ms Lorna Ross.

Background

2. This is an Application for a payment order in respect of rent arrears and costs in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (“the 2017 Rules”).

Case Management Discussions and Evidential Hearing

3. Case Management Discussions (“CMDs”) proceeded remotely by telephone conference calls on 26th March 2024 and 10th June 2024. Reference is made to the Notes on the CMDs. An evidential Hearing proceeded by remote tele-conference call at 10.00am on 28th August 2024. The Applicant Ms Ross attended the Hearing. The Respondents Mr Mackinnon and Miss Rogers did not attend the Hearing and were not represented. There was no explanation for their absence. The Tribunal noted that Application papers and notification of the Hearing details had been sent to the Respondents, separately, by recorded delivery post on 17th June 2024 and 5th August 2024 respectively. The Tribunal further noted that the papers posted to the Respondents had been received and signed for by Miss Rogers on 19th June 2024 and 6th August 2024 respectively. In the circumstances the Tribunal considered that the Respondents were aware of the Application and the details of the Hearing. As the Respondents had not attended the previous CMDs without explanation, and Ms Ross had attended the last Case Management Discussion (“CMD”), having attempted to attend the first CMD, the Tribunal considered that it was in the interests of justice to proceed with the Hearing.

Evidence and Submissions

4. Ms Ross stated that she was no longer seeking to amend her Application to include redecoration costs. The Tribunal acknowledged receipt from Ms Ross of invoices from CR Smith, dated 24th November 2021, and Rowan Electrical, dated 12th June 2023, in respect of the items listed numbers 2 and 3 in the Notes on the CMD dated 10th June 2024. She said that she had not been able to obtain documentation in respect of her gas and electricity costs claims, items 4 and 5 in that Note on the CMD. Ms Ross said that, as she could not produce relevant papers, she was content that her claims for utility costs be disregarded. Ms Ross stated that her former letting agents in respect of the Property, Fife Letting, had taken over 150 photographs of the Property to evidence its condition when the Property keys were delivered to them by Miss Rogers in November 2022. She said that she had asked for the photographs but the letting agents had said that they could not be found. Ms Ross stated that an inventory of items etc in the Property was made available at the commencement of the Respondents’ tenancy in 2017 and that there was another inventory produced at the end of the tenancy. She said that the letting agents had submitted a report, in respect of the condition of the Property when they accessed this following receipt of the keys from Miss Rogers.
5. Ms Ross stated that when the Property was recovered, after the Respondents had left, it was discovered that the bath panel had been removed and damaged, **She said that the panel was slightly damaged before the commencement of the tenancy.** She stated that the bath panel ordinarily had to be pulled off to access a water stopcock and could then be reinstated. Ms Ross stated that she had been told by Mr Mackinnon and Miss Rogers that the front door of the

Property had been damaged by a local gang, as she had said at the CMD on 10th June 2024. She said that she surmised that Mr Mackinnon may have kicked the door in after an argument with Miss Rogers. She stated that the occupant of a neighbouring property had told her of Mr Mackinnon and Miss Rogers having many heated arguments in the Property. Ms Ross said that all of the electrical sockets throughout the Property, which were at ground level, had been damaged. She said that she was unsure as to whether these had been kicked, or struck by a Hoover or similar object. Ms Ross stated that the sockets were all undamaged and in good working order at the commencement of the Respondents' tenancy. Ms Ross stated that the wash hand basin in the bathroom had a crack in it but was not leaking. She said that the toilet base was leaking and the flushing mechanism was not working properly. Ms Ross said that the toilet leak may not have been caused by Mr Mackinnon and/or Miss Rogers. Ms Ross said that the bathroom in the Property had been installed at a cost of some £7,000.00 by the previous proprietor shortly before she purchased the Property in 2014. She said that the cooker in the kitchen was extremely dirty when the Respondents left. She described its state as "disgusting". Ms Ross said that the cooker was included in the new kitchen which she had installed after she bought the Property in 2014. Ms Ross said that the cooker had been professionally cleaned in the years following 2014 and prior to the Respondents' tenancy beginning in 2017. She said that her electrical contractors considered that it was more economic to replace the gas cooker with an electric cooker. She said that she had found it difficult to obtain detailed documentation from the suppliers of utilities to the Property regarding the payments she had made to them.

6. Ms Ross stated that she sought that the Tribunal grant her a payment order in respect of the costs she had to incur as a result of damage to the Property, which she considered had been caused by the Respondents, as well as rent arrears owing to her. She said that she was not clear that she would be able to recover monies in the event that the Tribunal granted a payment order in her favour. She stated that she would obtain advice in this regard from Sheriff Officers and/or a solicitor.
7. Ms Ross stated that the Respondents' tenancy deposit, of £450.00, had been lodged with Safe Deposits Scotland and that she had not yet made any claim for payment of those deposit monies to her.
8. At the conclusion of the Hearing Ms Ross stated that she will try to obtain copies of the initial and final inventories of items in the Property, as well as a report from the letting agents in respect of the condition of the Property when the tenancy ended, as soon as possible, and within 14 days from the date of the Hearing, to enable the Tribunal to have all relevant information before making their decision in respect of the Application. Ms Ross also said that she will again try to obtain documentation supporting her claim for utility costs and will ask her former letting agents again regarding the availability of the photographs they took when they accessed the Property at the end of the tenancy.
9. **Ms Ross sent an email to the Tribunal's office, on 10th September 2024, confirming that she had been unable to obtain copy inventories, report**

and photographs from her former letting agents and, also, documentation in respect of utility costs. She stated that she sought that the Tribunal finalise their decision in respect of her Application.

Findings in Fact and Law and Reasons for Decision

10. Section 71 of The Private Housing (Tenancies) Act 2016 provides as follows:

(1) In relation to civil proceedings arising from a private residential tenancy-

(a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),

(b) a sheriff does not have competence or jurisdiction.

(2) For the purposes of subsection (1), civil proceedings are any proceedings other than-

(a) the prosecution of a criminal offence,

(b) any proceedings related to such a prosecution.

11. Therefore, the Tribunal has jurisdiction in relation to claims by landlords (such as the Applicant) for payment of rent arrears and other costs from tenants (such as the Respondents) in respect of a private residential tenancy ("PRT") such as this.

12. The Respondents Mr Mackinnon and Miss Rogers were sent papers in respect of the Application and given the opportunity of lodging representations and/or documentation and have not done so. They were correctly notified of the Hearing but did not attend and were not represented. They have not provided evidence, and/or made any submissions, opposing the order sought by Ms Ross in respect of the Application. Having considered all of the available evidence, being all of the written evidence including rent statements, bank statements **as well as** Ms Ross' oral evidence, the Tribunal made the following findings in fact, on a balance of probabilities:-

- 1) The Respondents left their tenancy of the Property without paying rent for the months August, September, October and November 2022, in the total sum of £1,760.00. **This outstanding rent sum is owing to Ms Ross.**
- 2) The front door of the Property was damaged in the autumn of 2021. The perpetrator/s of the damage cannot be identified.
- 3) The sockets throughout the Property were damaged by the Respondents during their tenancy of the Property. **Ms Ross had to pay £250.00 to electrical contractors to repair/replace the sockets.**
- 4) The bath panel in the bathroom in the Property had been removed and damaged by the Respondents during their tenancy. **The panel had been slightly damaged prior to the commencement of the tenancy. As it was further damaged it required to be replaced and Ms Ross paid plumbing contractors £192.00 to do so.**

- 5) At the end of Respondents' tenancy there was a crack in the wash hand basin in the bathroom. The cause of the crack cannot be attributed to the Respondents
 - 6) The toilet in the bathroom was leaking when the Property was recovered by Ms Ross. The leaking also cannot be attributed to any action/s on the part of the Respondents.
 - 7) The cooker in the Property was in a very dirty condition at the end of the Respondents' tenancy. Ms Ross was entitled to have the cooker cleaned and the cost for this borne by the Respondents. A reasonable cost for cleaning the cooker is **£100.00**.
 - 8) Ms Ross does not have documentation showing payments made by her in respect of utilities used during the tenancy. She is content that her claims for utility costs are disregarded.
13. The Tribunal made their findings in fact in reliance on the documentation supplied by Ms Ross and her clear and consistent oral evidence. The Tribunal found Ms Ross to be a very credible witness. There was no contradictor to Ms Ross' evidence as the Respondents have not engaged in the Application proceedings. The Tribunal did not find that the Respondents should meet the costs of the installation of the new front door and panel as there was no evidence which established that it was more likely than not that the damage had been caused by Mr Mackinnon and/or Miss Rogers. They did not find that the cost of the supply and installation of a new wash hand basin, and toilet, should be borne by the Respondents, given that both had been installed some years before the beginning of Mr Mackinnon and Miss Rogers' tenancy and, again, as there was no evidence before the Tribunal which established that the damage to those items had been caused by the Respondents. To her credit Ms Ross stated during the Hearing that the damage to the toilet may not have been caused by Mr Mackinnon and Miss Rogers. Ms Ross also told the Tribunal that she is content that her claims for utility costs are disregarded.
14. The Tribunal found that Ms Ross was entitled to remedy matters but not to place herself in a better position. They found that it would have been reasonable for Ms Ross to thoroughly clean the gas cooker in the kitchen of the Property, rather than replace this with an electrical cooker. The Tribunal found that the sum of £100.00 would be an appropriate cleaning cost in this regard, and that it was reasonable and appropriate that this cost be borne by Mr Mackinnon and Miss Rogers given that, clearly, they were the users of the cooker during the tenancy.
- 15. The Tribunal found that Ms Ross is entitled to be paid by the Respondents Mr Mackinnon and Miss Rogers in respect of the outstanding rent owing, of £1760.00, as well as the costs she incurred for repair and replacement of sockets, of £250.00 and replacement of the bath panel, of £192.00, as well as the sum of £100.00 in relation to cleaning of the cooker.**
16. Having made their findings in fact the Tribunal found in law that Mr Mackinnon and Miss Rogers are in breach of their PRT obligation to make payment of rent to Ms Ross as they did not pay rent for the months August, September, October and November 2022. They are also in breach of their obligation to maintain the

Property in reasonable condition during their tenancy, given that items in the Property, which were in satisfactory condition at the beginning of the parties' PRT, were damaged at its end. They found that given the Respondents' breaches, Ms Ross suffered financial loss, referred to in paragraph 15 above and is entitled to the grant of an order for payment in the total sum of £2302.00.

Outcome

17. Accordingly, the Tribunal made an order for payment by the First Respondent Mr Kenneth Mackinnon and the Second Respondent Miss Chloe Rogers, jointly and severally, to the Applicant, Ms Lorna Ross, of the sum of £2302.00.

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.

Gerald McWilliams

28th August 2024

Legal Member

Date