



**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/23/2026**

**Re: Property at 28 Glenhuntly Road, Port Glasgow, PA14 5QB (“the Property”)**

**Parties:**

**Mrs Diane McLaughlan, Ms Sian McLaughlan, Lea-Rig, Ayr Road, Rigside, Lanark, ML11 9NP; Lea-Rig, Ayr Rd, Lanark, ML11 9NP (“the Applicant”)**

**Mr Kevin Green, 15 John Wood Street, Port Glasgow, PA14 5HU (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of Three thousand and two pounds and ninety seven pence (£3002.97) against the Respondent in favour of the Applicant**

**Background**

- 1 By application to the Tribunal dated 13 June 2023 the Applicant sought an order for payment against the Respondent in respect of unpaid rent and damages. In support of the application the Applicant provided a copy of the tenancy agreement dated 30 July 2021, a rent statement and copy email correspondence between the Applicant and the Respondent.
- 2 On 5 September 2023 the Applicant sent in a further email with a breakdown of repairs required to the property following the termination of the tenancy. The Applicant confirmed that they were seeking a total sum of £6061.71 from the Respondent, being rent arrears of £2196.71 and repair costs of £3865.

- 3 Following a request for further information from the Tribunal the Applicant's representative sent in photographs of the condition of the property at the start and the end of the tenancy together with a mandate from the applicant authorising them to represent her in the proceedings before the Tribunal and an amended application form confirming the sum sought.
- 4 By Notice of Acceptance of Application dated 2 November 2023 a Legal Member of the Tribunal with delegated powers from the Chamber President confirmed that there were no grounds upon which to reject the application. The application was therefore referred to a Case Management Discussion ("CMD"). Notification of the application and CMD was served upon the Respondent personally by Sheriff Officers on 18<sup>th</sup> April 2024.

### **Case Management Discussion ("CMD")**

- 5 The first CMD took place by teleconference on 8 May 2024. The Applicant was represented by Mr Campbell Gibney of Homefinders Estate Agency. The Respondent, Mr Green, was in attendance.
- 6 The Tribunal noted that Mr Green had submitted a number of emails earlier that morning that it had not yet had sight of, which included a postponement request. Mr Green confirmed this, and advised that he was seeking a postponement of the CMD. He stated that he had only received the paperwork on 18<sup>th</sup> April 2024 and had not had sufficient time to gather evidence for his response. He confirmed that he did not dispute the rent arrears but he was disputing the damage costs. He advised that he had requested a breakdown from the Applicants' agent but had not been provided with this.
- 7 The Legal Member noted that the costs for the damages sought in the application were provided as an estimate. However Mr Gibney confirmed that the works had since been done. The Legal Member confirmed that the Tribunal would require confirmation of the actual costs of carrying out the works together with vouching in the form of invoices or receipts. Mr Gibney advised that he believed the Applicants had carried out some of the work themselves but he could seek to obtain information from them as to an hourly rate for the various repairs.
- 8 The Legal Member therefore noted that the rent arrears were not disputed, however the issues to be resolved were:-
  - (i) What works were carried out, and what costs were incurred, by the Applicants in reinstating the property to a reasonable condition following the termination of the Respondent's tenancy; and
  - (ii) Whether the Respondent was liable to pay the costs under the terms of the tenancy agreement between the parties, i.e. were the damages attributable to the Respondent's wilful acts or negligence.

- 9 The Legal Member thereafter determined to adjourn the CMD to a future CMD in order to obtain full details as to the costs incurred by the Applicants in reinstating the property, together with vouching where available, and a breakdown of the costs attributable to the works carried out, and to obtain the Respondent's position in respect of the damages, i.e. whether he agrees with, or disputes, the costs sought by the Applicants.
- 10 A Direction was issued to the parties confirming the timescales for submission of the requested information and the CMD was adjourned.
- 11 Following the CMD the Applicant submitted a response from the Applicant with a list of costs incurred by email dated 21 May 2024. On 30 May 2024 the Applicant emailed the Tribunal again with a copy invoice from Handy Guy To Know in the sum of £2320.89 in respect of a replacement kitchen, replacement doors and works to the kitchen ceiling and four receipts from B&M Stores for £26, £31.49, £9.01 and £76.01 pertaining to paint, lampshades and wallpaper.
- 12 On 8 July 2024 the Respondent emailed the Tribunal to advise that he was awaiting the evidence from the Applicant before providing a response. He asked the Tribunal to confirm that the Applicant had submitted all of their evidence so that he could proceed. The Tribunal responded by email on 19 July confirming that the Applicant had submitted emails on 21 May 2024 and 30 May 2024, both of which had been forwarded to the Respondent. The Respondent was asked to confirm if he had not received the documents, in which case the Tribunal would send them again. The Tribunal confirmed that it would consider the evidence submitted, together with the Respondent's response, at the CMD, and would seek further evidence if required in order to make a decision on the application. There was no response from the Respondent.
- 13 The second CMD was scheduled for 20 September 2024. Notification was sent to the parties by email on 28 August 2024.
- 14 The second CMD took place by teleconference on 20 September 2024. The Applicant was again represented by Mr Gibney. The Respondent was not present.
- 15 The Tribunal noted that the Respondent had sent an email to the Tribunal at 9.15am asking that the CMD be postponed for one week, mainly due to his ill health. The Respondent advised that he would also be seeking an adjournment for the Applicant to obtain reports from other properties about the condition of those properties. He also advised that he was raising a sheriff court action against the Applicant and required to obtain images that would prove the Applicant had made false representations to the Tribunal, as well as medical evidence for his son. The Respondent also stated that the Applicant's representative had a conflict as he was a distant relation of the Respondent and he was misrepresenting the Applicant's position. The Respondent advised that the evidence provided by the Applicant was "all lies". The Respondent concluded by stating that he would not be in attendance at the CMD but would

abide by “whatever you chose to determine”, including any determination as to the unpaid rent which he claimed had been withheld.

- 16 The Tribunal noted that the request for postponement had been submitted at the last minute, and the Respondent had provided no evidence to support the various allegations made in his email. Four months had passed since the previous CMD. He had therefore been given ample time to gather said evidence and submit a response. Taking into account the overriding objective to avoid delay in the proceedings whilst giving proper consideration to the issues, the Tribunal considered it could proceed with the CMD in the Respondent’s absence, having been satisfied that he had been given proper notification of the CMD under Rule 17(2) of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017. The Respondent had clearly accepted in his email that the Tribunal could make a decision if he failed to attend the CMD.
- 17 Accordingly the Tribunal proceeded to discuss the application with Mr Gibney. Mr Gibney confirmed that the Applicant sought an order for payment in the sum of £6061.71. There had been significant damage to the property as a result of the Respondent’s wilful acts or neglect. The Respondent was therefore due to pay the costs under the terms of the tenancy agreement.
- 18 The Tribunal noted the further information produced by the Applicant in the form of invoices and receipts, together with a list of costs. The Tribunal queried the invoice from Handy Guy to Go which suggested that the kitchen had been replaced at a cost of £2320.89. However the Applicant in her list of costs had indicated that she was only seeking the costs of the replacement doors, which she had been advised by the contractor was £550. Mr Gibney was unclear on this point. The Tribunal asked if the damage to the kitchen was so severe that the entire kitchen had to be replaced, as the evidence before it did not appear to reflect that. Mr Gibney again was unsure, but stated that significant work had been carried out by the Applicant to restore the property to a reasonable condition following the Respondent’s departure.
- 19 The Tribunal advised that it was struggling to understand the calculation of the £3865 sought by the Applicant in relation to repair costs. The corresponding evidence submitted by the Applicant did not reflect that sum. Mr Gibney advised that the Applicant had carried out a lot of the work herself, and therefore she had not suffered any financial loss in terms of payments to contractors. He queried whether she could recover an hourly rate for that. The Tribunal advised that it would require to see any proof of actual financial loss on the Applicant’s part, or justification for why an hourly rate was due.
- 20 The Tribunal advised that it did not currently have sufficient information before it to make an order for the total sum sought by the Applicant in respect of the repair costs. The Tribunal confirmed that the CMD could be put to a hearing for further evidence to be submitted and considered before a decision was made on the application. Mr Gibney advised that the Applicant did not wish any further delay. She wanted the matter brought to an end. Mr Gibney confirmed

therefore that the Applicant would be content for the Tribunal to make a decision on the application based on the information before it.

- 21 The Tribunal therefore confirmed that it would make a decision based on the information provided to date by the Applicant and Respondent, and would issue that decision in writing following the CMD.

### **Findings in Fact**

- 22 The Applicant and Respondent entered into a tenancy agreement in respect of the Property which commenced on 1 August 2021.
- 23 In terms of Clause 8 of the said tenancy agreement the Respondent undertook to make payment of rent at the rate of £475 per month.
- 24 The tenancy between the parties terminated on or around 22 July 2023.
- 25 As at the date of termination rent arrears in the sum of £2196.71 were outstanding.
- 26 In terms of Clause 17 of the said tenancy agreement the Respondent undertook to take reasonable care of the property and to be liable for the cost of repairs where the need for them was attributable to his fault or negligence, that of any person residing with him, or any guest of his.
- 27 Following the termination of the tenancy the Applicant required to carry out various repairs to the property. The said repairs can be attributed to the Respondent's fault or negligence.
- 28 In particular the Applicant required to carry out redecoration, remove rubbish, replace lampshades and replace four doors in the kitchen.
- 29 The damage caused by the Respondent was excessive and could not be considered fair wear and tear.
- 30 The Applicant incurred repair costs in the sum of £805.96. This included fuel costs of £120, wallpaper costing £59.96, lampshades costing £20, paint costing £56 and replacement doors costing £550.
- 31 The total sum due by the Respondent under the terms of the tenancy agreement is £3002.27.
- 32 Despite request the Respondent has refused or delayed in making payment of the sum due.

## Reasons for Decision

- 33 The Tribunal reached a decision on the application taking into account the application paperwork, the written representations from the parties and the verbal submissions at the CMD. The Tribunal was satisfied that it could make a decision based on the information before it and that it would not be prejudicial to the parties to do so. The Applicant's representative had confirmed that the Applicant was content for the Tribunal proceed to a decision following the second CMD, and did not wish a hearing. The Respondent had been given ample opportunity to submit a full response to the application but had failed to do so. He had instead sought to delay the proceedings by submitting a further postponement request. The Tribunal took into account the overriding objective to avoid delay insofar as compatible with the proper consideration of the issues and concluded that it could proceed to make a decision on the application.
- 34 The Tribunal accepted that the Respondent was obliged to pay rent under the terms of the tenancy agreement and had breached that obligation, resulting in rent arrears of £2196.71. The Respondent had stated at the first CMD that he did not dispute the arrears were due. He had latterly made mention of withholding rent in his email to the Tribunal but had submitted no evidence of this, and no evidence to support a rent abatement in this case.
- 35 With regard to the repair costs, whilst the Applicant had claimed the sum of £3865, there was no breakdown to show how this sum had been calculated. The Tribunal had requested this at the first CMD. The Applicant had subsequently provided vouching for various costs. The Tribunal accepted that the Applicant had likely carried out some of the repairs herself, as outlined in her written representations, however in the absence of any specification or clarity as to how this equated to the sum sought the Tribunal was unable to take this into account in the calculation of the sum due.
- 36 With regard to the kitchen doors, the Applicant had produced an invoice for a replacement kitchen, which included the doors, in the sum of £2320.89. However she had stated in her written representations that the contractor had advised her that the cost of replacing the doors amounted to £550 of those costs. The Tribunal could not conclude based on the information before it that the damage caused by the Respondent was such that it required the entire kitchen to be replaced. That appeared to be accepted by the Applicant, in that she had specifically stated the costs of the replacement doors. Accordingly the Tribunal could not find the Respondent liable for the total cost of the replacement kitchen. The Tribunal did however accept, based on the photographic evidence before it of the damage to the doors, that he was liable for the costs of those repairs in the sum of £550.
- 37 The Tribunal was further satisfied, based on the evidence provided by the Applicant in the form of check-in and check-out photographs, that the remaining costs incurred by the Applicant were a result of the Respondent's breach of his obligations under Clause 17 of the tenancy agreement. The damage went beyond fair wear and tear and could therefore be attributed to the Respondent's

fault or negligence. The Tribunal therefore concluded that the Respondent was due to pay the sum of £805.96 in respect of the repair costs.

- 38 The Tribunal therefore made an order for payment in the sum of £3002.97 against the Respondent.

### **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.**

Ruth O'Hare

**14 October 2024**

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**Legal Member/Chair**

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**Date**