



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 71(1) of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/23/3643

Re: Property at 88 Braeside, Keith, AB55 5AT (“the Property”)

Parties:

Mr Charles Pirie, Glack of Midthird, Botriphnie, Drummuir, Keith (“the Applicant”)

Miss Liza Michelle Summers Allan, Flat 2/1, 26 Argyle Street, Rothesay, Isle of Bute, PA20 0AU (“the Respondent”)

Tribunal Members:

Graham Harding (Legal Member) and Ahsan Khan (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondent to the Applicant in the sum of £1450.00.

Background

1. By application dated 12 October 2023 the Applicant’s representative, Mrs Sonya Hayward, Moray CAB, Elgin, applied to the Tribunal for an order for payment in respect of alleged rent arrears and other costs arising from the Respondent’s tenancy of the property. The Applicant’s representative submitted a copy of the tenancy agreement together with a rent statement and bank statements in support of the application.
2. By Notice of Acceptance dated 19 December 2023 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion (“CMD”) was assigned.

3. Intimation of the CMD was served on the Respondent by Sheriff Officers on 29 February 2024.
4. By emails dated 13 March and 2 April 2024 the Respondent submitted written representations to the Tribunal.

The Case Management Discussion

5. A CMD was held by teleconference on 4 April 2024. The Respondent did not attend. In a telephone call to the tribunal clerk, she explained she was at work and unable to attend but in any event had nothing to add to her written representations. The Applicant attended along with his wife and was represented by Ms Hayward from Moray CAB.
6. The Tribunal noted that the Applicant had retained the Respondent's deposit of £350.00 and that this amount fell to be deducted from the rent said to be due of £1800.00 leaving a balance of £1450.00. In addition, Ms Hayward explained that on 14 occasions the Respondent had been late in paying rent and the Applicant was claiming a further £280.00. The Tribunal queried if during the course of the tenancy the Respondent had been advised that late payments were being claimed and was advised that she had not been so advised. The Tribunal referred Ms Hayward to the written representations submitted by the Respondent and the allegations that the Respondent's wife had entered the property during the Respondent's absence and as a result her utility bills had increased. This was denied by Mrs Pirie. The Tribunal referred Ms Hayward to the statement supplied by the Respondent's father. As this had been submitted late there was a short adjournment to allow the Applicant and Ms Hayward to discuss its terms. Thereafter Mrs Pirie maintained that she had never met the Respondent's father and had never entered the property as suggested by the Applicant and her father. Ms Hayward queried the relevancy of the written representations given that the issue in dispute was unpaid rent. The Tribunal indicated that although it was not altogether clear it did appear that the Respondent might be attempting to offset her increased utility costs against the rent claimed. The Tribunal also noted as pointed out by Ms Hayward that the Respondent had claimed in her written representations that she had brought her rent up to date except for her last two weeks. Therefore, the facts were disputed. The Tribunal explained that where facts were disputed there was an Upper Tribunal decision that required the Tribunal to adjourn the proceedings to a hearing before a full tribunal.
7. The Tribunal noted the issues as:
Does the Respondent owe the Applicant rent?
If so how much?
Is the Applicant entitled to claim late payment charges that were not intimated to the Respondent during the course of the tenancy?
Is the Respondent entitled to any reduction in rent as a result of the alleged use of the property by the Applicant's wife during periods when the Respondent was at sea?
If so by how much?

8. Following the CMD the Tribunal issued Directions to the Applicant and the Respondent dated 4 April 2024.
9. By emails dated 1 May 2024 the Respondent advised the Tribunal that she required further time to comply with the Directions.
10. By email dated 22 May 2024 the Applicant's representative submitted written representations in response to the Tribunal's Directions.
11. A hearing assigned for 7 August 2024 was postponed at the request of the Respondent due to her non-availability and also because the Applicant was not available.
12. Intimation of the adjourned hearing date was sent to the parties on 5 November 2024.
13. By email dated 3 December 2024 the Respondent advised the Tribunal that she was unable to attend the hearing as she was at work. Having considered the Respondent's request for a postponement and the terms of the CMD Note that made it clear that the Respondent had to attend the hearing and that intimation of the date and time of the hearing had been given well in advance the Tribunal was not satisfied that the interests of justice would be served by granting a further postponement particularly as the Respondent had failed to comply with the Tribunal's directions of 4 April 2024. The Tribunal therefore refused the Respondent's request for a postponement and the parties were so advised.

The Hearing

14. A hearing was held by videoconference on 4 December 2024. The Applicant attended in person along with his wife and was represented by Mrs Sonya Hayward from the Applicant's representatives. The Respondent did not attend nor was she represented. The Tribunal being satisfied that proper intimation of the hearing had been given to the Respondent determined to proceed in her absence.
15. Mrs Hayward confirmed that the Applicant was no longer insisting on payment of the late payment charges and was only looking for an order in respect of unpaid rent in the sum of £1800.00 as detailed on the rent statement submitted to the Tribunal. Mrs Hayward also confirmed that from this amount fell to be deducted the deposit retained by the Applicant in the sum of £350.00 leaving a balance of £1450.00.
16. In response to queries from the Tribunal Mrs Pirie said that she had entered the property when the Respondent had been away from home to check on the property but that she had asked for permission. She said she had done so because the Respondent could be away for four to six weeks at a time and she had wanted to check on the heating in the cold weather. Mrs Pirie said that the Respondent had left the heating on in the property "ticking over" and that she

had not interfered with it as she did not know how to operate it. In response to a further query from the Tribunal Mrs Pirie confirmed that she had supplied the Respondent with Cuprinol to paint the garden fence but that this had not been done and she had painted the fence herself. Mrs Pirie also said that the Respondent had left the garden in a mess.

17. Mrs Hayward asked the Tribunal to grant an order for payment in the sum of £1450.00.

Findings in Fact

18. The Respondent owed rent of £1800.00 as at 11 July 2023 when the tenancy ended and this amount was still outstanding at the date of the hearing.
19. The Applicant retained the Respondent's deposit of £350.00.

Reasons for Decision

20. The Tribunal was satisfied from the written representations and documents submitted by the Applicant's representatives together with the oral submissions that the Respondent owed rent of £1800.00 at the end of her tenancy of the property. The Tribunal was also satisfied that the Applicant had retained the Respondent's deposit of £350.00 leaving a balance due by the Respondent to the Applicant in the sum of £1450.00.
21. The Respondent was given the opportunity to provide the Tribunal with: -
1. Full details of all payments of rent paid by her or on her behalf throughout the tenancy and following the end of the tenancy.
 2. Confirmation of the amount of rent she accepts as being due by her.
 3. Confirmation of the amount of additional sums for gas and or electricity said to have been incurred as a result of the use of the property by the Applicant's wife.

However, the Respondent failed to comply with the Tribunal's Directions and despite being given proper notice of the date and time of the hearing waited until the day before the hearing to advise the Tribunal that she was unable to attend having previously failed to attend the CMD and having previously requested a postponement of the earlier hearing. In the circumstances the Tribunal was not satisfied there was any merit in the Respondent's opposition to the order sought.

Decision

22. The Tribunal finds the Applicant entitled to an order for payment by the Respondent to the Applicant in the sum of £1450.00.

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.



Graham Harding
Legal Member/Chair

4 December 2024
Date