

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**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/24/2356**

**Re: Property at 65 SEAFORTH ROAD, FALKIRK, FK2 7TR (“the Property”)**

**Parties:**

**Mr Anthony Mmonyi, Mrs Joy Mmonyi both residing at 9 GARTCOWS PLACE, FALKIRK, FK1 5PL (“the Applicants”)**

**WEST VIEW PARK HOMES, LYJ Accountants Ltd, 32 POLWARTH GARDENS, EDINBURGH, EH11 1LN (“the Respondent”)**

**Tribunal Members:**

**Mary-Claire Kelly (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to grant an order for payment in the sum of NINE HUNDRED AND EIGHTY-FOUR POUNDS (£984)**

**Background**

1. By application dated 22 May 2024 the applicants seek an order for payment from their former landlord, the respondent.
2. The following documents were lodged with the application
  - Copy lease
  - Copy text and email correspondence between parties
  - Photographs of the property
  - Screenshots showing cost of second hand television, mattresses and sofas

- Adjudication Outcome from Safe Deposits Scotland
3. The respondent lodged written submissions.
  4. A cmd took place via teleconference on 23 October 2024. Mr Mmonyi attended. Mr Alex Walker the sole Director of West View Park Homes and registered owner of the property attended on behalf of the respondent.
  5. At the cmd the Tribunal noted that parties were in dispute in relation to the date when the property was recovered by the respondent. Mr Mmonyi's position was that he gave 28 days' notice which expired on the 13 September 2023. He stated that he had been moving out gradually and returned to the property on 12 September to remove his final items. When he attempted to obtain access he stated that he was unable to do so. Thereafter he attempted to contact Mr Walker to gain access and to complain that the property had been accessed before the lease had terminated. Mr Mmonyi stated that Mr Walker did not respond to his requests to gain access to the property on 12 September and afterwards.
  6. Mr Mmonyi's position is that due to the lack of access to the property on the 12 September 2023 he was unable to remove his personal possessions. He therefore seeks a payment order to cover losses incurred due to the disposal of his personal possessions.
  7. Mr Walker disputed Mr Mmonyi's timeline of events. He stated that the locks in the property would not have been changed until after 13 September as agreed. He stated that he is a landlord of multiple properties and it is the standard practice that the property will not be entered until after the expiry of the notice period.
  8. The Tribunal fixed a hearing to determine the application. The Tribunal indicated in a note issued after the cmd that the applicants should specify a figure for the amount sought and provide vouching to support the amount being sought. Parties were also requested to lodge any evidence relevant to the question of when the property was recovered, including for example emails, text messages, file records.

**Hearing – teleconference – 15 April 2024**

9. Mr Mmonyi attended the hearing on behalf of both applicants. Mr Walker was in attendance for the respondent. Neither party called witnesses.
10. It was not disputed that the applicants had moved into the property on 8 February 2023. Parties were also agreed that that Mr Mmonyi gave 28 days' notice that he intended to leave the property. There was agreement that the notice terminated the tenancy on 13 September 2023. It was agreed that a payment of £795 was paid by direct debit in respect of rent due for the whole month of September 2023 and that Safe Deposits Scotland made an adjudication in respect of the deposit. From the initial deposit of £1000, the sum of £800 was returned to the tenants.
11. The Tribunal heard evidence from Mr Mmonyi on the date when the respondent had recovered the property and the amount of payment sought. Both parties were given an opportunity to ask questions of each other. The Tribunal took steps to ensure that both parties had an opportunity to state their position on the application in full prior to concluding the hearing. The following is a summary of the oral evidence heard on the points in dispute.

### **Summary of Mr Mmonyi's evidence**

12. Mr Mmonyi stated that the property had been let unfurnished. He had decided to leave the property after he and his family had found alternative accommodation at his current address in August 2023. After he secured that accommodation he contacted Mr Walker by text message to give the required 28 days' notice. It was agreed that this meant that the final day of the tenancy would be 13 September 2023. Mr Mmonyi stated that he had been moving his items out of the property during the notice period. He had arranged for a number of items to be removed in a van however, he had to arrange a second removal. He stated that he had also been making arrangements to redecorate the property during the notice period. Mr Mmonyi stated that he had attended the property on 12 September to remove the remaining items and complete some redecoration and cleaning and found that the locks had been changed. He referred to text messages that had been submitted which showed that he had messaged Mr Walker at 4.40pm on 13 September 2023 to state that he had been unable to gain access to the property the previous day. Mr Walker had texted back to say that he would look into the matter however Mr Mmonyi stated

that he heard nothing further from the respondent. Mr Mmonyi stated that he lost a number of items from the property which were never returned to him. He referred to emails which he had submitted which showed that he had emailed on 23 September 2023 asking for a response in relation to his personal possessions and raising the issue of documents that had been left in the property. Mr Mmonyi also referred to a letter that had been submitted which showed he had written to Mr Walker by recorded delivery about the disposal of the items on 20 January 2024.

13. Mr Mmonyi stated that he had lived in the property with his wife, the joint tenant, their 3 children and 5 extended family members. He stated that he worked as a forklift driver and that his wife had been a student while they lived at the property. He stated that when they had moved into the property it had been in a poor state of cleanliness. He stated that he had contacted Mr Walker about this and been told to arrange for cleaners to attend the property. He stated that he paid £100 in cash to cleaners. Mr Walker had told him that the £100 he had paid to the cleaners would be reimbursed to him. Mr Mmonyi stated that he did not receive any reimbursement of the £100 he had spent. Mr Mmonyi stated that he had not produced any evidence of the payment of £100 as he had understood that Mr Walker did not dispute that he had made the payment.
14. Mr Mmonyi referred to photographs that had been submitted with the application. These showed the television, 2 mattresses and sofa that were in the property. He stated that these items had been purchased second-hand when he moved into the property. He stated that as they had been disposed, he had to replace them when he moved to his new home. Mr Mmonyi referred to screen shots of second hand websites that he had submitted. These showed the second hand replacement cost of the furniture and television.
15. Mr Mmonyi stated that he sought £4,000 to cover the costs he incurred due to legal documents that were in the property being disposed of. He referred to the photographs which showed a red plastic folder in the property. He stated that the folder had contained documents which proved his ownership of land in Nigeria. He stated that he had left the documents in a bedroom cupboard in the property where he had thought they would be safe. He stated that the folder had contained survey plans for 12 plots of land that he had purchased in the Anambra State area of Nigeria, deeds of assignment and family receipts – a

document signed by the family selling the property. Mr Mmonyi was not able to provide an address for the properties. He thought he had bought the properties in 2021 or 2022. He stated that as the documents had been disposed of he would have to swear an affidavit to prove his ownership and travel to Nigeria to do that. He stated that he had not approached any lawyers to enquire about the process involved in proving his title to the properties in the absence of the documents and therefore had no specific information on the costs involved. Mr Mmonyi stated that he would have to pay consultancy fees and was worried that money would be extorted from him as part of the process of proving his title. Mr Mmonyi stated that the sum of £4,000 he sought comprised the cost of flights to Nigeria plus an estimate of what the costs of proving his title to the land would be. He stated that he had not made any enquiries about whether an affidavit could be signed in Scotland that could be used in Nigeria. Mr Mmonyi stated that he still hoped that the documents might be returned to him by Mr Walker and that if they were he would consider the matter at an end.

### **Summary of Mr Walker's evidence**

16. Mr Walker stated that his position had not changed the cmd. He had not lodged any further documents or evidence since the cmd. He stated that property had not been recovered before the agreed date on 13 September 2023 and that Mr Mmonyi's evidence on this point was untruthful. Mr Walker stated that the text messages lodged by Mr Mmonyi showed that he had made contact with him but did not prove that the locks had been changed prior to the agreed date.
17. Mr Walker raised concerns about the overall conduct and cleanliness of the tenancy. He stated that it had not been agreed that the applicants' extended family could live in the property. He also stated that the property had been left in a poor condition.
18. Mr Walker confirmed that he owns 250 rental properties with his wife. He stated that his full time employment is managing his rental properties. He employs 2 staff to assist him. He stated that there is no reason why the locks would have been changed earlier than the agreed date. He stated that he found Mr Mmonyi to be challenging to deal with. He stated that he was unhappy with the condition the property had been left in and blocked Mr Mmonyi's messages as he was

difficult to communicate with and he did not understand what more he could say to him.

19. Mr Walker was referred to the decision of Safe Deposits Scotland. He confirmed that from the deposit of £1,000, £800 had been refunded to the applicants. He stated that he had no knowledge of a video being taken inside the property on 12 September 2023 which had been referred to in the decision as having been supplied by the landlord.
20. Mr Walker stated that the items that had been left in the property were of very low value if any. He stated that the mattresses and sofa were stained and that similar items could be obtained for no cost from charities. He stated that he did not retain any documents that had been left in the property and queried why Mr Mmonyi would have left important documents in the property after he had moved out. He had employed 'rubbish men' to dispose of all the remaining contents of the property and had not attended personally until a few days after the termination of the tenancy.

### **Findings in fact**

21. Parties entered in a private residential tenancy agreement with a commencement date of 8 February 2023.
22. Mr Mmonyi gave 28 days' notice that the applicants sought to terminate the agreement via text message.
23. Parties agreed that that final day of the contractual tenancy would be 13 September 2023.
24. Monthly rent was £795.
25. The applicants paid £795 via direct debit on 1 September 2023.
26. Mr Mmonyi attended the property on 12 September 2023 to find that the locks had been changed.
27. A television, 2 mattresses, a sofa and a folder of documents belonging to Mr Mmonyi were disposed of by the respondent before the contractual tenancy had ended.
28. The applicants are entitled to a refund of £456 in respect of the overpayment of rent for the last month of the tenancy in September 2023.

29. The applicants have provided vouching to show that they suffered financial loss amounting to £528 as a result of the respondent disposing of the television, mattresses and sofa.
30. The applicants have failed to provide vouching to demonstrate financial loss arising from the loss of documents in the property.
31. The applicants have failed to provide vouching to demonstrated financial loss of £100 in relation to cleaning carried out at the property when they moved in.

### **Reasons for the decision**

32. The Tribunal had regard to the application and documents lodged by the applicant, the written submissions from the respondent and the oral evidence of Mr Mmonyi and Mr Walker at the cmd and hearing.
33. In relation to the disputed issue of when the respondent had recovered the property the Tribunal preferred the evidence of Mr Mmonyi which was supported by text messages and correspondence. The Tribunal found Mr Mmonyi's evidence on the timeline around 12 and 13 September to be clear. He had lodged text messages which corroborated his position that when he had attended the property on 12 September 2023 the locks had been changed. Text messages dated 13 September 2023 were clear in their content that the locks had been changed. Against this, the Tribunal found Mr Walker's evidence on this point to be unconvincing. The Tribunal gave weight to the fact that Mr Walker had not lodged any evidence to support his position that there was no question of the respondent recovering the property earlier than the agreed date. Mr Walker had referred to his staff who had dealt with the applicants but had not led any witness evidence from employees or supplied file notes or any other documents to support his position. It would have been expected that some documentary evidence held by Mr Walker would have corroborated his position. The Tribunal also gave considerable weight to the decision of Safe Deposits Scotland. The decision referred to video evidence that had been submitted to them by the respondent which showed that they had been in the property on 12 September 2023 when a video had been made. This information fitted with Mr Mmonyi's timeline. Mr Walker had no explanation for the video that had been made on 12 September 2023.

34. Having determined that the respondent had terminated the tenancy a day early, denying Mr Mmonyi access to remove his final personal possessions the Tribunal then assessed the level of damages that should be awarded.
35. The respondent did not dispute that the sum of £456 had been overpaid for September 2023 given the date when the tenancy ended. The Tribunal determined that this amount should be repaid to the applicants.
36. The applicants had submitted photographic evidence to show that a television, 2 mattresses and a sofa had been in the property when the respondents had changed the locks. Mr Walker's position was that any items within the property were of little value. Based on the photographs provided and the evidence provided by the applicants in the forms of screenshots showing the cost of comparable second hand items the Tribunal found it reasonable to award £150 for the television, £78 for the 2 mattresses and £300 for the sofa. Mr Mmonyi's evidence was that the items had all been purchased second hand and due to some visible wear and tear to the items the Tribunal preferred the lower end of the vouching provided by the applicant.
37. In relation to the amount of £4000 sought to cover the costs incurred as result of documents being disposed of, the Tribunal accepted the evidence of the respondent that a folder containing papers had been in the property and had been disposed of by the respondent. However, the Tribunal determines that the applicants have not shown that they incurred a financial loss as a result of the disposal of documents. Mr Mmonyi stated that the documents were the equivalent of title deeds relating to 12 properties that he had purchased in Nigeria. The applicants lodged no documentary evidence to support a financial loss of £4000. Mr Mmonyi's oral evidence on this item was at times unclear. He was unable to provide an address for the properties and was unclear when they were purchased. He had not sought legal advice on the process to be followed to establish title in the absence of the documents or the associated costs. Mr Mmonyi referred to the need to sign an affidavit in Nigeria however he had not sought advice on whether he could sign an affidavit in Scotland without returning to Nigeria. No specific information or vouching was provided to corroborate the stated financial loss. The Tribunal was not satisfied that financial loss arising from the disposal of the documents had been established.

38. In relation to the £100 sought to cover the cost of cleaning at the commencement of the tenancy, no vouching had been provided to show that the cost had been incurred. The applicant appeared to have acted in good faith in seeking to have the property cleaned after he had and his family had moved in. However there was no independent or documentary evidence that there had been an agreement between Mr Walker and Mr Mmonyi that he would be reimbursed for the cost of cleaning the property. The Tribunal was not satisfied based on the evidence produced that the respondent was liable to make a payment of £100 to the applicant for this item. The Tribunal gave particular weight to the fact that no vouching for the payment had been produced such as a receipt from the individual who had carried out the cleaning work.

### **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.**

Mary-Claire Kelly

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**Legal Member/Chair**

**15 April 2024**  
**Date**