

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

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

**Chamber Ref: FTS/HPC/CV/24/4211**

**Re: Property at 139B Union Street, City Centre, Aberdeen, AB11 6BH (“the Property”)**

**Parties:**

**Claymore Homes Limited, Aden Business Park, Newlands Road, Mintlaw, Aberdeenshire, AB42 5BP (“the Applicant”)**

**Ms Linda Leung, Mr Kenny Leung, Mr David Grierson, 139B Union Street, City Centre, Aberdeen, AB11 6BH (“the Respondents”)**

**Tribunal Members:**

**John McHugh (Legal Member) and Ann Moore (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order should be made requiring the Respondents jointly and severally to make payment of the sum of £20,147.21 to the Applicant.**

**Background**

The Applicant is the Landlord and the Respondents in terms of a tenancy agreement in respect of the Property dated 9 and 10 February and 3 March 2023. The Applicant presented an application for payment of outstanding rent of £16,621.34 to the Tribunal on 10 September 2024.

On 25 February 2025, the Applicant applied to amend the sum of rent claimed to £20,147.21.

## **Case Management Discussion**

A Case Management Discussion ("CMD") took place by telephone conference on 21 March 2025. The Applicant was represented by its letting agents' Raphael Bar and Leanne Young.

Linda and Kenny Leung were in attendance by telephone from Italy. David Grierson was not in attendance. Mr Grierson had contacted the Tribunal by email to advise that he is in the USA attending to his brother who has been hospitalised. Mrs Leung advised that she would make representations on his behalf.

The CMD dealt both with the present application and with two related applications relating to eviction of the Respondents.

## **Findings in Fact**

The Applicant is the Landlord and the Respondents the Tenant in terms of a tenancy agreement in respect of the Property dated 9 and 10 February and 3 March 2023.

The tenancy agreement provides (at Clause 1.2) that the Respondents are jointly and severally liable for the obligations arising under it.

The rent payable is £1050 per month.

The first two Respondents are married to one another. The third Respondent is the first Respondent's second cousin.

On 2 November 2023, the Tribunal (in Application HPC/RP/23/1995) made a finding that the Property failed to meet the repairing standard.

On 29 April 2024, the Tribunal made a Rent Relief Order ("RRO") which reduced the rent payable by 20%.

The Tribunal was satisfied that the repairs required were completed by 17 January 2025 on which date it revoked the RRO and the rent reverted to the level specified in the tenancy agreement.

The rent due (including the reduction provided by the RRO) is currently £20,147.21.

## **Reasons for Decision**

When the Application was presented, the rent arrears were £16,621.34. They have in the period since then until the date of the CMD, increased to £20,147.21.

On 25 February 2024, the Applicant applied to the Tribunal to amend the sum claimed to £20,147.21. The Tribunal is empowered to grant such an application by virtue of Rule 14 of the Tribunal Procedure Rules. At the hearing, the Respondents objected to the amendment although they had no arguments specific to the application for amendment itself; rather their objections were focused upon their more general opposition to the making of any payment order.

The Tribunal considers that it would be in the interests of justice to allow the sum claimed to be amended in order to avoid the need for additional proceedings covering similar issues to be raised. There is no prejudice to the Respondents in allowing the amendment since there are no different arguments which apply to the increased amount from those which apply to the original sum claimed.

As regards the substantive dispute, the Applicant claims in respect of outstanding rent due under the tenancy agreement. The Applicant has lodged a statement which sets out the calculation of the rent outstanding. That shows that no rent has been paid since October 2023. It also shows that the rent has been charged at a discounted rate of £1050 during the period when a Rent Relief Order applied.

The Respondents' position is that they are "not saying they would not pay". Their position is that they will only pay when ordered to do so. They consider that the Applicant has a "brass neck" in pursuing the rent having regard to the history of the matter. The Respondents regard Mr John Smith as the Landlord although in fact the Landlord is a limited company of which he is a director, Claymore Homes Ltd.

The particular matters which the Respondents consider relevant in justifying their non-payment are: 1 the Applicant's delay in addressing repairs to the windows which are the subject of the earlier Tribunal repairs case and the Rent Relief Order; 2 Mr Smith having "stormed into" the Property on 1 May 2024 during which visit they say he was abusive and caused distress to Mr Grierson (who has mental health issues); 3 Mr Smith having generally been of bad character and unsuitable to be a landlord (as evidenced by a recent conviction relating to domestic violence); and 4 no regard having been taken of a payment towards rent of £2000 by a family member of the Respondents in August 2023.

As regards these factors:

1 the rent charged had been reduced by 20% in accordance with the Rent Relief Order. That was the sanction which the Tribunal had in an earlier application seen fit to impose in relation to the failure to meet the repairing standard. (It should be noted that the Tribunal did not find, as Mrs Leung stated, that the Property was "not fit for human habitation"). We consider that there is no basis to attempt to impose a further sanction against the Applicant for the same matter in the form of a denial of the Applicant's right to receive the contractually due rent.

2 Mr Bar indicated that his colleagues attending the Property on 1 May 2024 have a very different account of the visit and do not accept that anyone was abusive. Whatever the position, again we do not consider that any conduct by Mr Smith on that occasion justifies the non-payment of rent.

3 We do not consider that Mr Smith's character or any criminal conviction for matters unrelated to the tenancy are relevant in considering the Respondent's liability to pay rent.

4 Mr Bar says that no record can be found of the £2000 payment. Mrs Leung says that it was made by her cousin's ex-wife and that she cannot now obtain from her evidence of the payment. Clearly, any payment which had been made would be directly relevant to our consideration of the matter. However, we prefer Mr Bar's evidence on this matter to that of Mrs Leung. We accept Mr Bar's evidence that his firm have tried to find the alleged payment but that they have been unable to locate it in their account. It is for the Respondents to evidence the payment and they are unable to do so.

In all the circumstances, we have been unable to identify any reason why the payment order sought by the Applicant should not be granted.

### **Decision**

**The sum claimed will be allowed to be increased to £20,147.21. The Respondents will be ordered jointly and severally to pay the Applicant the sum of £20,147.21.**

### **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.**

**Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.**

**Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.**

# J. McHugh

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24 March 2025

Date

