

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)**

Chamber Ref: FTS/HPC/CV/23/3675

Re: Property at High Banks Farmhouse, Kirkcudbright, DG6 4QB (“the Property”)

Parties:

Mr Charles Hope-Dunbar, Banks House, Kirkcudbright, DG6 4XF (“the Applicant”)

Mr Richard Jolley, Mrs Donna Jolley, Gill Bank, Main Street, Sprongholm, DG7 3LP; 18 Tarrant Close, Wigan, Greater Manchester, WN3 6HR (“the Respondents”)

Tribunal Members:

Virgil Crawford (Legal Member) and Tony Cain (Ordinary Member)

Decision (in absence of the Second Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

BACKGROUND

1. By Lease dated 5th January 2020 the Applicant let the Property to the Respondents.
2. The tenancy start date was 1st January 2020.
3. Rent was initially payable at a rate of £500.00 per calendar month although during the tenancy, the rent was increased.
4. During December 2021 Mr Richard Jolley vacated the Property. Donna Jolley is believed to have forwarded an email to the Applicant advising the Applicant of that fact.
5. The tenancy ended on 13th July 2023. As at the date of termination of the tenancy, arrears of rent had accrued. These accrued between 1st July 2022 and 14th July 2023, the total amount of rent arrears being £9,300.00.
6. The Applicant subsequently raised proceedings before the Tribunal seeking a payment order for rent arrears and for additional sums claimed to be due by the Respondents to the Applicant. The total amount claimed was £11,294.68.

7. The Respondent, Mr Jolley disputed liability for any sums due on the basis he had vacated the premises during December 2021 and the arrears of rent, and other costs sought to be charged, were accrued thereafter.
8. Mrs Donna Jolley had previously made a brief submission to the Tribunal suggesting that, during the tenancy, there were various issues with the Property. In particular there were difficulties with the heating within it. While the submissions did not specifically say so, it is assumed she was suggesting that there should have been an abatement of rent as a result.
9. After sundry procedure, a hearing was assigned to be held by video conferencing at 10:00am on 14th July 2025.

THE HEARING

10. The Applicant was represented by Mr A Turnbull of Messrs Gillespie, Gifford and Brown LLP. The Respondent Mr Richard Jolley attended personally. The Respondent Mrs Jolley did not participate.
11. In advance of the hearing Mrs Jolley had submitted a request for the hearing to be postponed. The Tribunal refused the postponement request. The reasons for the refusal are repeated here for ease of reference: -

“The application to postpone the Hearing on 14th July 2025, presented by Mrs D Jolley, is refused.

In refusing the request the Tribunal has had regard to the following:-

 - *There has been a number of previous postponements at the request of the Respondents.*
 - *The reasons advanced for a postponement are in almost identical terms to a request presented by Mrs D Jolley on 17th March 2025. That postponement was granted.*
 - *In granting that postponement request the Tribunal issued correspondence to the Parties stating*

“All parties should be aware that it is very unlikely that there will be further adjournments allowed without documentary evidence to support the reason for the adjournment. This adjournment has been given to allow all parties to prepare their case and to respond to the direction if they have not already done so. The response to the direction must be submitted no later than 1st May 2025. The Tribunal process does not prevent parties continuing to negotiate should they wish to do so.”
 - *No documentary, nor any other type of, evidence has been provided in support of the request for a postponement.*
 - *The Respondents have not complied with the Direction previously issued by the Tribunal.*
 - *The case commenced in October 2023 and is now approaching its 2nd anniversary. The Tribunal has a duty to deal with cases justly, efficiently and expeditiously in the interests of all Parties. Given the history of the case, it is not in the interests of justice to postpone the proceedings further.”*

12. In the circumstances, the Tribunal determined that it was appropriate to proceed with the hearing in the absence of Mrs Jolley. She was aware of the hearing and did not participate in it.
13. Mr Turnbull moved the tribunal to grant a payment order, confirming the order sought was in the amount of £11,294.68. Mr Jolley opposed that order being granted. Having regard to the documentary evidence presented to the Tribunal prior to the hearing and the submissions made at the hearing, there were two matters which fell to be determined:
 - a) Was Mr Richard Jolley legally responsible for any payment due, given he had vacated the premises during December 2021.
 - b) Was the full amount claimed by the Applicant due and payable?

Is Mr Jolley liable?

14. In relation to whether Mr Jolley was legally responsible for payment, the issues surrounded whether he had properly terminated his interest in the tenancy.
15. The termination of a private residential tenancy is governed by the Private Housing (Tenancies) (Scotland) Act 2016 ("the 2016 Act").

s44 of the 2016 Act provides as follows :-

No termination by parties except in accordance with this Part

A tenancy which is a private residential tenancy may not be brought to an end by the landlord, the tenant, nor by any agreement between them, except in accordance with this Part

s48 of the 2016 act states: -

Tenant's ability to bring tenancy to an end

(1) A tenant may bring to an end a tenancy which is a private residential tenancy by giving the landlord a notice which fulfils the requirements described in section 49.

(2) A tenancy comes to an end in accordance with subsection (1) on the day on which the notice states (in whatever terms) that it is to come to an end.

(3) But a tenancy does not come to an end in accordance with subsection (1) if—

- (a) before the day mentioned in subsection (2), the tenant makes a request to the landlord to continue the tenancy after that day, and*
- (b) the landlord agrees to the request.*

(4) In subsections (1) and (3), in a case where two or more persons jointly are the landlord under the tenancy, references to the landlord are to any of those persons

s49 of the 2016 states as follows: -

Requirements for notice to be given by tenant

(1) A notice fulfils the requirements referred to in section 48(1) if—

(a) it is given—

(i) freely and without coercion of any kind,

(ii) after the tenant begins occupying the let property,

(b) it is in writing, and

- (c) it states as the day on which the tenancy is to end a day that is after the last day of the minimum notice period.*
- (2) A notice is to be regarded as fulfilling the requirements referred to in section 48(1), despite its not complying with the requirement described by subsection (1)(c), if the landlord agrees in writing to the tenancy ending on the day stated in the notice.*
- (3) In subsection (1)(c), "the minimum notice period" means a period which—*
(a) begins on the day the notice is received by the landlord, and
(b) ends on the day falling—
(i) such number of days after it begins as the landlord and tenant have validly agreed between them, or
(ii) if there is no such valid agreement, 28 days after it begins.
- (4) An agreement as to the number of days after which a minimum notice period ends is invalid for the purpose of subsection (3)(b)(i) if the agreement—*
(a) is not in writing, or
(b) was entered into before the tenancy became a private residential tenancy.
- (5) In a case where two or more persons jointly are the landlord under the tenancy, references in this section to the landlord are to any one of those persons.*

s78(3) of the 2016 act states as follows: -

Interpretation

(3) In a case where two or more persons jointly are the tenant under a tenancy, references in this Act to the tenant are to all of those persons unless stated otherwise.

16. While the Tribunal understood the basis upon which Mr Jolley was advancing a position that he was not responsible for payment of any amount due following him vacating the premises, the termination of his interest in a private residential tenancy is governed by the 2016 Act. He had not given notice in terms of s48 and s49 of the 2016 act. There had been no agreement in writing by the landlord that Mr Jolley had been freed and relieved of his responsibilities in relation to the tenancy as referred to within s49(2) of the 2016 Act.
17. In the circumstances, the Tribunal concluded that as a matter of law, Mr Jolley was liable for obligations arising in terms of the tenancy agreement, notwithstanding the fact he had previously vacated the premises. In the circumstances, in the event of any amount being found due by the Respondents, Mr Jolley would be jointly and severally liable along with Mrs Jolley.

The amount due

18. In relation to the amount claimed, there was no dispute that arrears of rent amounted to £9,300.00. While there had been a suggestion that there were various issues with the Property during the tenancy, there was no information before the Tribunal to enable it to conclude that the Applicant had been made aware of any defects, nor that any rent was being withheld by the

Respondents to secure compliance by the Applicant with his obligations in terms of the lease. Indeed, Mr Jolley advised that during his time of residency, rent was paid in full, without any part being withheld and was unaware of any issues following him vacating the Property.

19. Mrs Jolley did not participate in the hearing and therefore the Tribunal was provided with no further information to support any suggestion that there had been any defects within the Property which would have justified the withholding of rent nor any abatement of rent. In the circumstances, the Tribunal found that a sum of £9,300.00, being the amount of arrears of rent as at the date of termination of the tenancy, was due resting and owing by the Respondents to the Applicant.

20. At the termination of the tenancy, the keys for the front and back door were not returned to the Applicant. The cost of replacing the locks was £43.87. While Mr Jolley was unable to say with any certainty what happened at the conclusion of the tenancy, the Tribunal accepted that if keys were not returned, it was reasonable for the landlords to replace the locks at the Property and concluded this was a reasonable charge for that work.

21. In relation to the remaining items claimed by the Applicant, the Tribunal concluded that it was not appropriate to make any order for payment. The various items claimed were as follows: -

- Estate labour to tidy up abandoned property, mow lawn and back garden, rake up grass and remove.
Two men for 12 hours each at £20 per hour £480.00
- Mowers and strimmer's for 12 hours at £12 per hour £144.00
- Estate labour to tidy up metal rubbish from gardens, workshops and garage and transport to Banks Farm to prepare for reclamation
1 man for 10 hours at £20.00 per hour £200.00
- Tractor and trailer for 10 hours at £15 per hour £150.00
- Estate labour to tidy up plastic rubbish and transport to assembly point at Banks Farm (for onwards transmission)
One man for 8 hours at £20.00 per hour £160.00
- a) Tractor and trailer for 8 hours at £15.00 per hour £120.00
- b) Direct labour to gather 361 bottles from house, garden and garage and transferred to Kirkcudbright Bottle Bank – 3 loads.
1 man for 7 hours (inc transport) @ £25 per hour £175.00
- c) Plumber – repair 5 leaks in pipework at back door (frost damage, unoccupied house)
W Johnson and Sons Ltd £721.81

22. In relation to each of the above items, it was explained to the Tribunal that “estate labour” indicated that persons who were already employed within the Applicant's larger business operation undertook the work and a notional amount was attributed to the work done by them and the hourly cost.

23. Similarly, the charge for mowers and strimmers, tractors and trailer related to a notional cost attributed for provision and use of equipment and machinery which was already within the ownership of the Applicant.

24. In relation to each of the above items the Tribunal determined that it was not appropriate to make any award in favour of the Applicant. The Tribunal had no information in relation to the size of the lawn and back garden nor why it required two men for 12 hours to undertake that work. Mr Jolley advised that when he resided at the Property he had a “ride on” mower and he was able to mow the lawn and back garden in approximately 1 hour.
25. Similarly, in relation to the charge relating to “metal rubbish” there was no information as to the amount of the “metal rubbish”, exactly what it was or why it would take one man 10 hours with a tractor and trailer to undertake this work. In addition, it was stated that this was taken to Banks Farm “to prepare for reclamation”. It is not known whether any such “metal rubbish” was sold for scrap or any other purpose or whether any sums were recovered by the Applicant.
26. In relation to the charge “plastic rubbish” the same consideration applied. There was no information as to the nature or extent of the “plastic rubbish” nor what was meant by “for onward transmission”.
27. The claim made for direct labour to gather 361 bottles and transfer to Kirkcudbright Bottle Bank is understood to have been work done by the Applicant personally. A notional hourly charge for the Applicant’s time was made at £25.00 per hour. No information was provided, however, as to why 3 loads, and presumably 3 return journeys, to a bottle bank were required. In the absence of further information, the Tribunal did not consider it appropriate to grant an order for payment of this amount.
28. In relation to the plumbing work, this is plumbing work which was done by an independent company and an invoice was produced. The invoice was dated 13th July 2023. While this was work which was clearly undertaken, the Tribunal was not satisfied the cost is an amount which was due and payable by the Respondents. While it is suggested that the work was required due to “frost damage, unoccupied house” it is noted the work was undertaken during the summer months of 2023. It would not be common for frost damage to arise at that time of year. While it was suggested that the damage pre-existed, there was no information to confirm how any leaks in pipework arose, that it was because of frost damage and that it was something for which the Respondents were responsible. On the basis landlords are generally responsible for ensuring the water supply and waste pipes at any property are in a good state of repair, this is work which would normally be the responsibility of the Applicant. In the absence of specific information which would entitle the Tribunal to conclude that there had been fault or negligence on the part of the Respondents giving rise to any damage requiring repair, the Tribunal was not in a position to make an order for payment in this amount.
29. The tribunal was advised that £200.00 has been recovered by the Applicant, that being by way of repayment of the tenancy deposit. In the circumstances, that sum was deducted from the amount the tribunal found to be due, leaving a balance due by the Respondents of £9,143.87.

Time to Pay

30. The Tribunal enquired of Mr Jolley whether he wished a time to pay direction. He advised that due to other commitments, the most he would be able to offer would be £200.00 per calendar month. Payment of the sum of £9,143.87 at a

rate of £200.00 per calendar month, however, would take almost 4 years for payment. Mr Turnbull, on behalf of the Applicant opposed a time to pay direction for £200.00 per month having regard to the period of time it would take for payment in full. He did advise, however, that on behalf of the Applicant, he would be willing to enter into discussions with the Respondents about a payment proposal but would not wish it to be in terms of a time to pay direction.

31. The Tribunal having considered the matter, concluded that a time to pay direction which would take almost 4 years for payment in full was not one that could reasonably be granted and, in the circumstances, the Tribunal declined to make a time to pay direction.

FINDINGS IN FACT

32. The tribunal found the following facts to be established: -
- a) By Lease dated 5th January 2020 the Applicant let the Property to the Respondents.
 - b) The tenancy start date was 1st January 2020.
 - c) Rent was initially payable at a rate of £500.00 per calendar month although during the tenancy, the rent was increased.
 - d) During December 2021 Mr Richard Jolley vacated the Property.
 - e) Mr Jolley did not inform the Applicant he had vacated the Property.
 - f) The Applicant did not consent to Mr Jolley terminating his interest in the lease.
 - g) The tenancy ended on 13th July 2023. As at the date of termination of the tenancy, arrears of rent had accrued. These accrued between 1st July 2022 and 14th July 2023, the total amount of rent arrears was £9,300.00.
 - h) The keys for the Property were not returned to the Applicant. The Applicant required to replace locks at the Property as a result of the failure to return the keys.
 - i) The cost of replacing locks was £43.87.
 - j) The rent arrears and cost of lock replacement amounts to £9,343.87.
 - k) The Applicant has recovered £200.00 of this amount from a tenancy deposit previously paid by the Respondents.
 - l) The sum of £9,143.87 is due, resting and owing by both Respondents to the Applicant.

REASONS FOR DECISION

33. While the position of Mr Jolley was noted, and while the Tribunal understood the basis upon which he was suggesting he was not liable for the sums claimed by the Applicant, that being the sums due all arose after he vacated the Property, the Tribunal requires to determine the matter before it by applying the facts of the case to the law. The manner in which a tenant can terminate an interest in a lease is set out in the Private Housing (Tenancies) (Scotland) Act 2016, the relevant sections of which are noted above. Unfortunately for Mr Jolley, the legal requirements to end a tenancy had not

been complied with and, in the circumstances, while he was no longer residing at the Property, he remained liable for the contractual obligations on the tenants in terms of the lease.

34. There was no dispute that arrears of rent amounted to £9,300.00 at the end of the tenancy.
35. There was no dispute that the keys for the Property were not returned. In the circumstances the Tribunal had no difficulty in concluding that the cost of replacing locks was an outlay properly incurred by the Applicant, that the amount claimed was reasonable and the Respondents were responsible for this outlay.
36. In relation to all other costs claimed by the Applicant the Tribunal was not satisfied on the information before it that these were costs incurred due to any actions or failings on behalf of the Respondents. In the circumstances the Tribunal could not make a payment order in relation to any part of the amount claimed other than the rent arrears and the cost of replacing locks.

DECISION

The Tribunal granted an order against the Respondents JOINTLY AND SEVERALLY AND SEVERALLY for payment of the sum of NINE THOUSAND ONE HUNDRED AND FORTY THREE POUNDS AND EIGHTY SEVEN PENCE (£9,143.87) STERLING to the Applicant

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.

V. Crawford

14 July 2025

Legal Member/Chair

Date