

**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)**

**Chamber Ref: FTS/HPC/CV/19/1491**

**Re: 18 Kirkview Avenue, Salsburgh, Shotts ML7 4NE ("Property")**

**Parties:**

**Catherine McGovern, 121 Muirhall Terrace, Shotts ML7 4LX ("Applicant")**

**Mitchels Robertson, George House, 36 North Hanover Street, Glasgow G1 2AD  
("Applicant's Representative")**

**John Logan Smith, 29 Kateswell Drive, Salsburgh, Shotts ML7 4NN  
("Respondent")**

**Tribunal Members:**

**Joan Devine (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber)  
("Tribunal") determined that an order for payment should be made.**

**Background**

The Applicant sought an order for payment of £1600 in respect of rent arrears and £1448.88 in respect of damages for breach of the tenancy agreement. The Applicant had lodged with the Tribunal Form F. The documents produced were a Tenancy Agreement dated 4 August 2017, copy rent statement showing rent arrears of £1600, copy invoices from Oilfast dated 3 May 2017 and 14 November 2018 for £216.45 and £292.43 respectively, copy invoice from Assured Heating dated 21 May 2019 for £60, copy undated invoice from Thomas Stoddart Painter and Decorator for £550 marked "paid", copy invoice from James Wightman Double Glazing Ltd dated 1 June 2019 for £120 and copy email from Shotts BT dated 6 June 2019 providing an estimate to supply and fit 3 roller blinds and curtain poles for £210 plus vat.

A Case Management Discussion ("CMD") took place on 6 August 2019. The Applicant was represented at the CMD, the Respondent did not attend. The CMD

was adjourned to 28 August 2019. The Legal Member issued Directions ("Directions") in which further information was sought as set out in the Directions. The Applicant's Representative provided further information in response to the Directions by email dated 16 August 2019. The CMD that took place on 28 August 2019 was adjourned as there had not been effective notification of the CMD to the Respondent.

### **Case Management Discussion on 18 October 2019**

A further CMD took place before the Tribunal on 18 October 2019 at the Glasgow Tribunals Centre. The Applicant was in attendance along with Sitara Kauser of the Applicant's Representative. There was no appearance on behalf of the Respondent. The Tribunal was satisfied that the CMD had been notified to the Respondent by advertisement on the Tribunal website.

The Applicant sought payment of £1600 in respect of arrears of rent. The documentation provided in support of the claim was a statement of account dated 27 August 2019 which showed rent falling due on 4 July, 4 August, 4 September and 4 October all of 2018 at £400 per month and remaining unpaid. In response to the Directions the Applicant's Representative had provided a copy (unsigned) notice to quit and a section 33 notice both of which asked the Respondent to remove from the Property by 4 November 2018. The section 33 notice stated that the tenancy would terminate on 4 November 2018. The tenancy agreement provided at clause 6 that rent was payable monthly in advance. The tenancy had come to an end on 4 November 2018. Rent was claimed up to that date.

The Applicant sought payment of damages of £1,448.88 in respect of breaches of the tenancy agreement. The claim was split into 5 items as follows:

- 1 The Applicant sought payment of 2 invoices from Oilfast. One was dated 3 May 2017 and was £216.45 and the other was dated 14 November 2018 and was for £292.43. The Applicant's Representative had stated in their email of 16 August 2019 that the payment was due in terms of clause 11 of the tenancy agreement. Clause 11 provided that the Respondent undertook to ensure that the accounts for the supply to the Property of gas, electricity and telephone were entered in his name with the relevant supplier and the Respondent undertook to pay all sums due for the supplies promptly for the period of the tenancy. Clause 11 made no reference to the cost of oil. At the CMD the Applicant's Representative submitted that the only way to heat the Property was by using oil. She referred to clause 15 of the tenancy agreement in terms of which the Respondent undertook to take reasonable care of the Property and to keep the Property aired and heated. She submitted that the Respondent had the benefit of the oil referred to in the invoice dated 3 May

2017 and that the Applicant had incurred the cost of the invoice dated 14 November 2018 in order to replenish the oil in the system.

- 2 The Applicant sought payment of £60 in respect of an invoice from Assured Heating dated 21 May 2019 for bleeding of the oil heating system. In the email dated 16 August 2019 the Applicant's Representative said that these invoices related to repairs which required to be carried out to the heating system as a result of the Respondent's failure to replace the oil. At the CMD the Applicant's Representative said that as a result of the Respondent failing to maintain the heating system it was necessary for the system to be bled at a cost of £60. She again referred to clause 15 of the tenancy agreement. She said that if the Property had been heated, the system would not have needed to be bled.
- 3 The Applicant sought payment of £550 in respect of an undated invoice from Thomas Stodart, Painter & Decorator in respect of the cost of decorating the Property. In the email dated 16 August 2019 the Applicant's Representative stated that the redecoration costs related to decoration required following the Respondent's removal of wallpaper, attachment of clocks to walls, pencil drawings on the walls in the hallway, removal of the fireplace and damage caused to doors by a dog kept in the Property. At the CMD reference was made to the photographs produced which showed that wallpaper had been removed. The Applicant told the Tribunal that the decorating had been carried out in May 2019. She said that the Property had not been tenanted since the Respondent had vacated. The Applicant's Representative made reference to clauses 15, 16 and 22 of the tenancy agreement. In terms of clause 15 of the tenancy agreement the Respondent was obliged to take reasonable care of the Property. In terms of clause 16 of the tenancy agreement the Respondent was obliged not to make any alterations to the Property without the prior consent of the Landlord. In terms of clause 22 of the tenancy agreement the Respondent was prohibited from keeping a pet in the Property without the consent of the Applicant. The removal of wallpaper, removal of the fire place, drawing on the walls in the hallway and hanging clocks on the walls thus causing damage to the wall coverings was a breach of clauses 15 and 16 of the tenancy agreement. Keeping a pet in the Property was a breach of clause 22 of the tenancy agreement.
- 4 The Applicant sought payment of £120 in respect of the cost of replacing old casement window handles. An invoice was produced from James Wightman Double Glazing Limited dated 1 June 2019. In the email dated 16 August 2019 the Applicant's Representative said that this cost was incurred as the Respondent had failed to return the keys to the windows at the end of the tenancy. The Applicant had required to replace the window handles in order

to be able to be able to bring them back to working condition. At the CMD the Applicant's Representative explained that the lock was integrated into the window handle. The Applicant told the Tribunal that all keys were present at the commencement of the tenancy.

- 5 The Applicant sought payment of £210 in respect of the cost of replacing blinds and curtain poles. A copy email from Shotts Mica Hardware dated 6 June 2019 was produced which estimated the cost of replacement at £210. At the CMD the Applicant's Representative said that the blinds and poles had not yet been replaced but the Applicant intended to do so.

The Applicant told the Tribunal that she had paid all of the invoices produced and intended to replace the blinds and curtain poles referred to.

### **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement for the Property dated 4 August 2017.
2. The Tenancy came to an end on 4 November 2018.
3. The rent in terms of the Tenancy Agreement was £400 per month, payable monthly in advance.
4. The Respondent had failed to make payment of rent due over the period 4 July 2018 to 4 October 2018. The total outstanding was £16 00.
5. The Applicant had incurred or intended to incur costs totalling £1448.88 as a result of the respondent failing to comply with the tenancy agreement.
6. Notice of the date of the hearing had been given to the Respondent by advertisement on the Tribunal website on 11 September 2019.

### **Reasons for the Decision**

The Tribunal determined to make an Order for payment of £3048.88. Rent was lawfully due in terms of the Tenancy Agreement at the rate of £400 per month and a balance of £1600 remained unpaid. The Respondent had failed to comply with clauses 15, 16 and 22 of the tenancy agreement. The Applicant had incurred costs and intended to incur costs of £1448.88 to repair the Property following the Respondent's failure to comply with his obligations in terms of the Tenancy Agreement. The total due was £3048.88.

## **Decision**

For the foregoing reasons, the Tribunal determined to make an Order for payment.

## **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.

Joan Devine

Joan Devine  
Legal Member

18/10/2019

Date