

**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 16 of the Housing (Scotland) Act 2014 Section**

**Chamber Ref: FTS/HPC/CV/19/1848**

**Re: Property at 10 Cormack Park, Rothienorman, Inverurie, Aberdeenshire, AB51 8GL (“the Property”)**

**Parties:**

**Mr John Wood, Mrs Koranit Wood, C/O Aberdein Considine, 2nd Floor Elder House Elder Street, Edinburgh, EH1 3DX (“the Applicant”)**

**Mr John Will, Mrs Louise Will, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Petra Hennig-McFatridge (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to payment by the Respondents of £6,000.48 with interest thereon at the rate of 8% per annum above The Royal Bank of Scotland Plc base rate from time to time, running from the date of the decision of the First-tier Tribunal to grant this order, being 20 September 2019, until payment.**

**Background:**

The Applicants are seeking an order for payment of rent arrears and other sums due for the property. The application in terms of Rule 70 (Civil Proceedings) was dated 13 June 2019. A copy rental agreement and a rent statement were submitted with the application together with a bundle of documents as per the list of documents set out in the paper apart to Part 6 of the application. These are referred to for their terms and held to be incorporated herein. The background for the application and submissions regarding the sums due are included in the paper apart to Part 5 of the application and are referred to for their terms and held to be incorporated herein.

The Tribunal fixed a Case Management Discussion (CMD) for 20 September 2019. The Applicant Mr John Wood attended on behalf of both Applicants. The Respondents did not attend.

The Respondents had been made aware of the date and time and venue by Service by Advertisement in terms of Rule 6A of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (the Rules).

No representations were received from the Respondents. The Respondents had not contacted the Tribunal prior to the CMD and did not attend.

The Tribunal was satisfied that they had been appropriately notified of the application and the CMD.

### **The Case Management Discussion:**

The Applicant asked for an order for payment as craved based on the submissions made in the paper apart of the application under Part 5. He confirmed that no further payments had been received. He further explained that the sum for the repairs had been explicitly billed for in sections and he was only claiming the items due by the Respondents. The cleaning bill was split into the deep clean related to the Respondents' agreement regarding keeping a dog and a general cleaning charge, which, given the content of the Check-Out Report was allocated  $\frac{1}{2}$  to the Respondents. He further explained that the £379.85 referred to in the deposit release report of independent adjudication had been agreed by the Respondents following the calculation of the LPG provider Gauld's Gas of the discrepancy of the level in the tank on the tenants moving out and had been released to him at that stage. The rest of the deposit had then been released and allocated to arrears as per the SafeDeposits Scotland adjudication decision. The sum claimed is the final amount outstanding.

### **Findings in Fact:**

- 1. The Applicants and the Respondents entered into a Tenancy Agreement commencing 2 October 2014.**
- 2. In terms of Clause 2 of the Agreement rent of £1200 is due in advance every calendar month.**
- 3. The parties entered into an agreement to vary the rent to £1000 per calendar month from October 2016 onwards.**
- 4. The Respondents vacated the property on 4 January 2019.**
- 5. No payments of rent have been received from the Respondents since July 2018.**
- 6. In terms of Clause 3 of the Tenancy Agreement a deposit of £1200 had been paid to the Applicants by the Respondents.**
- 7. £379.85 of that sum had been refunded to the Applicant at the end of the tenancy in terms of an account for gas, which was settled at the time the Respondents moved out.**
- 8. The remaining £820.15 were released by Safe Deposit Scotland to the Applicants towards rent arrears as shown in the Safe Deposit Scotland Report of independent adjudication.**

9. Rent for the 4 days in January were charged pro rata at £98.63
10. The total rent arrears at the end of the tenancy were £5,098.63 as shown in the rent statement.
11. The rent arrears under deduction of the released deposit sum are £4,278.48.
12. The Applicants had called on the Respondents to make payment of the rent arrears in various letters from the Applicant's representatives Aberdeen Considine to the Respondents between 6 August 2018 to 13 February 2019.
13. In terms of Clause 9 of the Tenancy Agreement the tenant accepts the property and the items listed in the inventory as being in good and tenable repair and condition as at the date of entry and "the Tenant shall be bound (a) to maintain the same in like condition throughout the duration of this Lease subject to Clause 19 thereof and (b) to maintain the Property in a clean and tidy condition at all times throughout the duration of this lease...."
14. In terms of Clause 12 of the Tenancy Agreement "The Tenant shall be permitted to keep one dog within the Property on the condition that all carpets, curtains and soft furnished and (sic) professionally cleaned at the end of the tenancy and the Property is returned free of animal odours."
15. In terms of Clause 18 of the Tenancy Agreement the tenancy undertakes "to replace or pay for any damage or losses occasioned throughout the duration of this lease (fair wear and tear excepted) as determined by the Inventory Clerk."
16. In terms of Clause 21 of the Tenancy Agreement "the Landlord shall be entitled to charge interest on all sums due arising from this Lease at the rate of eight per centum per annum above The Royal Bank of Scotland plc base lending rate..."
17. A final inspection of the property was carried out 4 January 2019 and the findings contained in the Check- Out Report prepared by Aberdeen Considine & Company.
18. The report lists under Items to Make Good various items as per the report allocated for repair to the tenant.
19. The report states at Requires Cleaning various items as per the report allocated for cleaning to the tenant.
20. The total cleaning costs for the property as per the invoice from First Class Cleaning Aberdeen were £570. £354 of which were allocated to professionally steam cleaning the carpets within the property. 50% of the remaining cleaning costs were allocated to the Respondents in terms of items included in the Check-Out Report.
21. The total repair costs for the property as per the invoice from KAP joinery & Property Maintenance were £315. £120 of said repair costs were allocated to the Respondents in terms of replacement of light bulbs and repairing damage to walls as set out in the Check-Out Report and the invoice.
22. The legal fees incurred by the Applicants in connection with the application as per the invoice from Aberdeen Considine dated 12 June 2019 amount to £1,140.

**23. The Respondents had not left a forwarding address which could have been used to request payment of the additional items after the Respondents had moved out of the property.**

**Reasons for the Decision:**

The Tribunal considered that the facts of the case were not disputed. In terms of Rule 17 of the Rules of Procedure:

Case management discussion

17.—(1) The First-tier Tribunal may order a case management discussion to be held—

(a) in any place where a hearing may be held;

(b) by videoconference; or

(c) by conference call.

(2) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a case management discussion and any changes to the date, time and place of a case management discussion.

(3) The purpose of a case management discussion is to enable the First-tier Tribunal to explore how the parties' dispute may be efficiently resolved, including by—

(a) identifying the issues to be resolved;

(b) identifying what facts are agreed between the parties;

(c) raising with parties any issues it requires to be addressed;

(d) discussing what witnesses, documents and other evidence will be required;

(e) discussing whether or not a hearing is required; and

(f) discussing an application to recall a decision.

(4) The First-tier Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Power to determine the proceedings without a hearing

However, in terms of Rule 18 of the Rules of Procedure:

18.—(1) Subject to paragraph (2), the First-tier Tribunal—

(a) may make a decision without a hearing if the First-tier Tribunal considers that—

(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and

(ii) to do so will not be contrary to the interests of the parties; and

(b) must make a decision without a hearing where the decision relates to—

(i) correcting; or

(ii) reviewing on a point of law,  
a decision made by the First-tier Tribunal.

(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.

The documents lodged are referred to for their terms and held to be incorporated herein.

The Tribunal did not consider that there was any need for a hearing as the facts of the case were not disputed and the evidence was sufficient to make the relevant findings in fact to determine the case.

The Tribunal makes the decision on the basis of the written evidence lodged by the Applicants and the information given at the CMD by the Applicant Mr Wood.

There was no valid defence to the action stated. It is not in dispute that the sums of arrears, repairs, cleaning and interest are due by the Respondents to the Applicants.

The Applicants are entitled to payment of the sum of £6,000.48 for outstanding rent arrears, cleaning costs, legal costs, repairs and interest as set out in the application.

**Decision:**

**The Tribunal grants an order for payment of the sum of £6,000.48 with interest thereon at the rate of 8% per annum above The Royal Bank of Scotland Plc base rate from time to time, running from the date of the decision of the First-tier Tribunal to grant this order, being 20 September 2019, until 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.**

Petra Hennig-McFatrige

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**Legal Member/Chair**

20.9.19

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**Date**