



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) arising from a tenancy under Section 32 of the Housing (Scotland) Act 1988**

**Chamber Ref: FTS/HPC/CV/21/2854**

**Re: Property at 3/2, 23 Argyle Place, Rothesay, Isle of Bute, PA20 0BA (“the Property”)**

**Parties:**

**Mrs Alison Clarke, 35 Ardbeg Road, Rothesay, Isle of Bute, PA20 0NL (“the Applicant”)**

**Mr David Beattie, Ms Susan McLean, 3 Argyle Terrace, Rothesay, Isle of Bute, PA20 0BD (“the Respondents”)**

**Tribunal Members:**

**Susan Christie (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order be granted against the Respondents for payment of £1301.22 to the Applicant.**

**Background**

1. The application seeks an order for payment of a sum of money from the Respondents for unpaid rent. It was accepted by the tribunal on 15 December 2021.
2. The application was accompanied with a copy of the short assured tenancy agreement between the parties and other documents.
3. The paperwork was served on the Respondents by Sheriff Officer on 19 January 2022, mode of service by letterbox.
4. Written representations were to be submitted by 7 February 2022. None were received.

**The Case Management Discussion- 23 February 2022**

5. A Case Management Discussion (CMD) took place on 23 February 2022 by conference call.
6. The Applicant participated.

7. The Respondents did not participate. The tribunal had sight of an execution of service by Sheriff Officers of the tribunal papers on the Respondents, by Sheriff Officer on 19 January 2022, mode of service by letterbox. The tribunal was satisfied that the procedure was fair and proceeded in the Respondent's absence.
8. The paperwork submitted along with the Application was examined and discussed. The application had been made for an order to cover the unpaid rent arrears.
9. It was clear though that there was also another part of the claim that was for the replacement of a double glazed window unit and fitting costs. This was sought from the Respondents as they had caused the damage.
10. An adjustment of the figures on the rent account was made after the security deposit was recouped by the Applicant. So, while the full deposit was supposed to be put towards unpaid rent, a smaller sum was applied after deduction of the repair/replacement costs.
11. The application form therefore needed to be amended at Part 5 to outline each heading of claim and the figure sought for each and vouching for the window repair/replacement and installation needed to be produced.
12. A corrected rent schedule showing the adjusted figures was required.
13. The Case Management Discussion was adjourned to a further date to allow amendment of the application form and to allow for the documents to be produced and all to be crossed over to the Respondents. This was to allow the Respondents fair notice of all headings of claim and allow them to check the detail of the amended claim.
14. A Note on the outcome of the Case Management Discussion and a Direction was issued to the Parties.

### **The response to the Direction**

15. The Applicant responded to the Direction on 3 March 2022 providing
  - (1) An amended application form Parts 5 & 6.
  - (2) An invoice from a building contractor for the removal of the broken glass and reinstatement.
  - (3) A letter from the applicant agreeing to collect and pay for the replacement double glazed unit.
  - (4) A letter from the Applicant to the Respondents outlining the discussions between the Parties and the Applicant's understanding of the position regarding their liability for the window replacement and the timescale for the work to be completed.
  - (5) An updated rent payments schedule showing the transactions on the account, including the deposit credit to the account and details of the payments made ending on 28 September 2021.
16. The Respondents had been invited by the Direction, to submit a written response by 14 days before the second Case Management Discussion but had not done so.
17. The Respondents were also invited to participate at the next Case Management Discussion.

## **The Case Management Discussion- 27 April 2022**

17. A Case Management Discussion (CMD) took place on 27 April 2022 by conference call.
18. The Applicant participated.
19. The Respondents did not participate. As postal intimation had been made on the Respondents and the procedure having been fair, the tribunal proceeded in their absence.
20. The Applicant stated the one of the Respondents had contacted her by text intimating knowledge of the tribunal process and she directed him to respond in writing to the tribunal if he wished anything to be considered.
21. The Applicant was unaware of any recent payments to the rent account, or the repair costs. The figure sought remained at £1301.22.
22. The rent arrears figure is £1051.
23. The last payment made towards unpaid rent was £25 on 28 September 2021.
24. The cost of replacement of a window unit said to be damaged by the Respondents is sought: £135 for the cost of the unit and £115.22.
25. A payment order is sought

## **Findings in Fact**

- I. A short assured tenancy was entered into between the Parties commencing on 31 March 2017 until 30 September 2017 then monthly thereafter.
- II. The contractual rent is £530 per calendar month in advance.
- III. The tenancy ended and the last payment of rent due was £550 on 29 April 2021.
- IV. The sum due of unpaid rent arrears is £1051.
- V. The Respondents are contractually liable for the cost of repairs where the damage has been caused by them. The sum due is £250.22 for the costs associated with replacing the window unit.
- VI. A payment Order in the sum of £1031.22 is granted.

## **Decision**

The Respondent did not participate. The tribunal had sight of an execution of service by Sheriff Officers of the tribunal papers on the Respondent. They had been issued with the Note and Direction after the first Case Management Discussion, had been sent the Applicant's response to the Direction and had been notified of the second Case Management Discussion. No written representations had been submitted by them. As proper intimation had been made, the tribunal was satisfied that the procedure was fair and proceeded in the Respondents absence.

The short assured tenancy agreement entered into between the Parties provided for rent to be paid at the rate of £530 per calendar month in advance during the tenancy until it ended. The last payment of rent was sought on 29 April 2021 and the tenancy ended shortly thereafter. Payments were made by the Respondents toward the unpaid rent until 28 September 2021 leaving an unpaid balance of £1051.

The tenancy contract provided at part 15.9 for the tenant to be liable for the cost of repairs attributable to their fault or negligence. The tribunal was satisfied that the

documents produced showed that a window unit required to be replaced and there was information to suggest that the Respondents had accepted liability for the damage. This was the position as stated by the Applicant and vouching had been provided. The Respondents had been given the opportunity during the process to provide information to the tribunal if they were disputing the sums sought but did not make any representations.

An order is granted 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.**



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**Legal Member/Chair**

**27 April 2022**  
**Date**