



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of The Private Housing (Tenancies) (Scotland) Act 2016 and Rule 111 of the of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017.**

**Chamber Ref: FTS/HPC/CV/21/2149**

**Re: Property at 6 Landsdowne Road, Larkhall, ML9 2LB (“the Property”)**

**Parties:**

**C & M Nosredna LLP, 3 Clairmont Gardens, Glasgow, G37 7LW (“the Applicant”)**

**GBS Lets Ltd, 82 Union Street, Larkhall, ML9 1DR (“the Applicant’s Representatives”)**

**Mr Mark Harris, 6 Landsdowne Road, Larkhall, ML9 2LB (“the Respondent”)**

**Tribunal Members:**

**Martin McAllister (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pays the sum of £3,100 to the Applicant.**

**Background**

- 1. This is an application seeking a payment order. It is dated 3<sup>rd</sup> September 2021. The Applicant seeks a payment in respect of arrears of rent amounting to £3,100.**

**Case management Discussion**

- 2. A case management discussion was held by audio conference on 2<sup>nd</sup> November 2021 at 2pm. Mr Barry Munro of the Applicant’s Representatives was present.**

## **Preliminary Matters**

- 3. The purpose of a case management discussion was explained.**
- 4. There was no appearance by the Respondent despite commencement of the case management discussion being delayed until 2.10pm.**
- 5. The tribunal noted that it had a Certificate of Service from Sheriff Officers confirming that the papers concerning the case management discussion including its date and time had been served on the Respondent on 30th September 2021.**
- 6. Mr Munro indicated that he saw no reason for a Hearing to be fixed to determine the application.**

## **The issue to be determined**

- 7. Mr Munro explained that the sum of £3,100 was due by the Respondent in respect of rent arrears. He referred the tribunal to a rent statement which he had lodged together with the tenancy agreement dated 18<sup>th</sup> June 2019 which disclosed that the monthly rent for the property is £550.**
- 8. Mr Munro said that there had been an issue with the Property in October 2020. There had been a leak in an upstairs shower room which had also caused damage to the kitchen. He explained that, for various reasons, the repairs took some time to be effected. One of the reasons was delay caused by an insurance company. He said that after necessary repairs had been concluded as far as he had understood, the Respondent reported an additional issue with the shower tray and enclosure. Mr Munro said that, if this had been reported timeously, it is something which could have been included in the insurance claim. He said that the Landlord authorised works to the shower tray and enclosure and that they were completed.**
- 9. Mr Munro said that the Respondent had intimated that he was withholding rent until all the works were done and the tribunal was referred to the rent statement which showed that no rent was paid in February, March, April, May, June and July 2021.**
- 10. Mr Munro said that the rent which had been withheld should have been kept in a separate account and should have been paid to the Landlord when all the works to the Property had been completed.**
- 11. Mr Munro said that the Respondent had intimated that he would repay the outstanding rent at the rate of £50 per month and that, in addition, he was seeking relief of 30% of the rent for the period that the works were outstanding.**

## **Submissions of Landlord Representatives**

- 12. Mr Munro said that if rent was withheld, it was due to be paid once any works had been done and that it should not be paid by instalments.**
- 13. He said that a discount in rent of 30% was disproportionate because there was little inconvenience caused to the Respondent and the Property could still be used.**
- 14. Mr Munro said that the Landlord may be prepared to make a concession of a deduction of rent of somewhere in the region of £300 but that the Respondent had not appeared at the Tribunal Hearing. He said that when he had asked for the rent arrears to be paid, the Respondent had said that the matter could be decided by the First- tier Tribunal.**
- 15. Mr Munro said that the current level of rent arrears is more than £3,100 but he considered that he could seek no more than that figure in a payment order.**

## **Findings in Fact**

- 1.1 The Respondent is the tenant of the Landlord conform to the private rented tenancy agreement dated 18<sup>th</sup> June 2021.**
- 1.2 The rent payable under the tenancy agreement is £550 per month.**
- 1.3 There are arrears of rent of £3,100.**

## **Reasons**

- 16. The tribunal had the tenancy agreement and the rent statement. The tenancy agreement showed that the Respondent has a liability to pay monthly rent for the Property at the rate of £550. The tribunal accepted these documents as a reflection of the liability to pay rent and the extent of the rent arrears.**
- 17. The Respondent had an opportunity to make his views known to the tribunal and chose not to do so. Mr Munro very candidly and responsibly set out what he considered the Respondent's position to be.**
- 18. The tribunal understood that the Respondent's position was that he retained rent until such time as the Landlord had performed the obligations incumbent on him ie to make good the damage caused by the water leak. The tribunal considered that the Respondent had a stateable argument in connection with that and the Applicant was not arguing that rent should not have been retained. The tribunal did not therefore need to address whether or not retention of the whole rent had been reasonable. The Applicant's position was stated to be that, as soon as the works had been done, the Respondent had an obligation to pay over the rent which had been retained. The tribunal accepted the**

submissions of Mr Munro in this regard. Any rent which had been held back by the Respondent became due on the Landlord having completed the repairs.

19. It appears, from what Mr Munro said, that the Respondent was seeking an abatement of rent. The tribunal came to no view on this because it did not hear from the Respondent in this regard. In any event, it is open to the Respondent to submit an application to the Tribunal in this regard.
20. The tribunal saw no reason for a Hearing to be fixed and considered that it could determine matters without doing so.

## **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pays the sum of £3,100 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.

**Martin J. McAllister**  
**Legal Member**  
**2<sup>nd</sup> November 2021**