



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies)(Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/20/2665**

**Re: Property at 6 Whitehill Crescent, Carluke, ML8 5DU (“the Property”)**

**Parties:**

**Mr Mark Winton, Mrs Catherine Winton, 8D Fox Covert Avenue, Edinburgh, EH12 6UQ (“the Applicants”)**

**Mr Robert McStay, 42 Unitas Crescent, Carluke, ML8 5AW (“the Respondent”)**

**Tribunal Members:**

**Rory Cowan (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a Payment Order in the sum of £608.36 should be granted against the Respondent in favour of the Applicants.**

- Background

By application dated 22 December 2020 (the Application), the Applicants sought a Payment Order against the Respondent in the sum of £1,351.31. The Respondent had agreed to act as a guarantor for the obligations of the former tenants for the Property being David McStay and a Jean Totten (the Tenants). The claim related to a variety of matters including rent arrears, damage to the Property, cleaning of the Property as well as for items supplied by the Applicants at the start of the tenancy which were missing when the Tenants vacated.

In support of the Application, various documents were produced including:

- 1) Guarantee Agreement dated 17 December 2019;
- 2) Copy tenancy agreement dated 11 December 2019 which also contained a guarantee provisions and was signed by the Respondent in addition to the Tenants;

- 3) Rent schedule;
- 4) Breakdown of the claim;
- 5) Check in and check out inventory;
- 6) Various invoices and quotes; and
- 7) Various photographs of the Property.

On 16 February 2021 the Applicants' representatives emailed Tribunal administration to advise that they had been awarded £400 from the security deposit paid by the Tenants relative to the tenancy for the Property and that this had been awarded in relation to the rent arrears.

Following acceptance of the Application, a Case Management Discussion (CMD) was fixed for 23 March 2021 to be dealt with by way of conference call.

- The Case Management Discussion

A Mrs O'Brien appeared at the CMD for the Applicants. She is the Applicants' letting agent. There was no appearance by the Respondent. Notwithstanding, the Tribunal was satisfied that proper service had been made of the Application to the Respondent and the CMD could proceed.

Mrs O'Brien confirmed that the £400 recovered by way of the security deposit had been allocated to rent arrears. This thereby reduced the sum claims by way of rent arrears to £518.36. She confirmed that the Tenants vacated the Property on or around 17 November 2020. She referred to the check in and check out inventory, the photographs lodged as well as the various invoices and quotes provided. Following discussion, she withdrew the following claims:

- 1) Mould Issue - £45
- 2) Kitchen Wall Unit - £150
- 3) Kitchen Cleaning - £20
- 4) Bathroom Cleaning - £20
- 5) Roller Blind (missing) - £25
- 6) Greenhouse gazebo - £50

She sought to amend the claim accordingly and along with the £400 received by way of the deposit this reduced the claim by £710. As there was no prejudice to the Respondent in reducing the sums sought against him, the Tribunal exercised its discretion and reduced the claim accordingly.

This left the claim for rent arrears (£518.36), the repair to the fridge freezer (£55) and the replacement cost of the Flymo lawnmower (£67.85).

- Findings in Fact and Law

- 1) By written agreement dated 17 December 2019 and the tenancy agreement dated 11 December 2019, the Respondent agreed to act as a guarantor for the obligations of David McStay and a Jean Totten in relation their tenancy for the Property.

- 2) The obligations so guaranteed included *inter alia* the payment of rent, any other obligations under the tenancy including those relating to taking care of the Property and its fixtures and fittings.
- 3) That the rent payable under that tenancy agreement was £400 per calendar month.
- 4) That David McStay and Jean Totten vacated the Property on or around the 17 November 2020 leaving arrears of rent totalling £918.36.
- 5) That the sum of £400 has been recovered from the security deposit paid for the Property relative to the rent arrears leaving a balance due of £518.36.
- 6) That the said David McStay and Jean Totten failed to take reasonable care of the Property and its fixtures and fittings and act in a proper tenant like manner in breach of their obligations under the tenancy agreement in relation to the fridge freezer.
- 7) That, as a result of that failure to take reasonable care of the Property's fixtures and fittings, the Applicants required to instruct repair of the said fridge freezer at a cost of £55.
- 8) That, at the commencement of their tenancy, the said David McStay and Jean Totten were provided with a flymo Lawn mower purchased on 29 August 2018 at a cost of £67.95.
- 9) That on 26 November 2020 the said flymo lawn mover was not present within the Property and has not been returned by them.
- 10) That a reasonable sum for the replacement cost of a second-hand lawn mower of this kind would be £35.
- 11) The Respondent having guaranteed the obligations under the tenancy agreement of the said David McStay and Jean Totten and them having breached their obligations to the Applicants, are is entitled to a payment order in the sum of £608.36 against the Respondent.

- Reasons for Decision

The Tenants failed to pay the rent due under the tenancy for the Property and have accrued arrears of rent in the sum of £518.36 after deduction of the security deposit.

The Tenants failed to take reasonable care for the Property and its fixtures and fittings and act in a proper tenant like manner to the extent that the fridge freezer required repair at a cost of £55. The cause of the damage to the fridge freezer is noted in the invoice dated 18 August 2020 by Western Refrigeration (Scotland) Limited is noted as being the failure to close the fridge freezer door properly. This occurred during the occupation of the Property by the Tenants.

It was noted in the check-in inventory dated 16 December 2019 that the Tenants were supplied with a flymo lawn mower. This was signed and acknowledged by the Tenants. As at 26 November 2020 it was recorded in check-out inventory that the said lawn mower was missing and has not been returned. The cost of the lawn mower new was £67.95 as evidenced by the BnQ receipt dated 29 August 2018. As at 26 November 2020 it was just over 2 years old. As reasonable replacement cost for a second-hand lawn mower of this kind would be £35.

As the Respondent agreed to act as guarantor for the obligations of the Tenants in relation to their tenancy for the Property, the Applicants are entitled to a Payment Order against him.

- Decision

A Payment Order in the sum of £608.36 was granted against the Respondent in favour of the Applicants.

### **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.**

R. Cowan

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**Legal Member/Chair**

\_\_\_\_\_**23 March 2021**\_\_\_\_\_  
**Date**