

**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**

**Chamber Ref: FTS/HPC/CV/18/1688**

**Re: Property at 70 Buttars Loan, Dundee, DD2 4PG (“the Property”)**

**Parties:**

**Mr Steve Wilkie, Mrs Mary Wilkie, Skyview, Eassie, DD8 1ST; Skyview, Eassie,  
DD8 1ST (“the Applicants”)**

**Mr Charles Symons, Flat A St James Court, 4 Tannadice Street, Dundee, DD3  
7PN (“the Respondent”)**

**Tribunal Members:**

**Neil Kinnear (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

This is an application for a payment order dated 3<sup>rd</sup> July 2018 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicants seek in their application payment of arrears in rental payments and damages of £2,885.42 in relation to the Property from the Respondent. They provided with their application copies of the short assured tenancy agreement, bank statements, rent arrears calculation, and various receipts, photographs and other documents.

The short assured tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Housing (Scotland) Act 1988*, and the procedures set out in that Act had been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 12<sup>th</sup> April 2019, and I was provided with the execution of service.

There have been two previous Case Management Discussions on 10<sup>th</sup> September 2018 and 24<sup>th</sup> October 2018, both of which were adjourned to allow various amendments to be made, and further information to be provided by the parties.

### **Case Management Discussion**

A Case Management Discussion was held on 2<sup>nd</sup> May 2019 at Caledonian House, Greenmarket, Dundee. The Applicants both appeared, and were not represented. The Respondent did not appear, nor did his legal representative attend at the Case Management Discussion.

However, the Respondent's representative, a firm of solicitors, wrote to the Tribunal by letter dated 28<sup>th</sup> March 2019. They advised that they had taken instructions from the Respondent, that he did not wish to engage with the Tribunal, and that the Tribunal should treat the application as undefended.

The Applicants invited the Tribunal to grant an order for payment of the sum of £2,885.42, and explained how this figure was comprised with reference to the material provided with their application.

The Applicants sought the sum of £1,586.66 in respect of rent arrears incurred up till the date when the Respondent quit the Property, and referred the Tribunal to a rent arrears statement disclosing this amount as outstanding.

On closer inspection, the Tribunal noted a minor error in the addition of the various rental amounts outstanding. The correct figure in this regard is £1,536.66, which the Applicants readily acknowledged was the appropriate figure. From that sum falls to be deducted the deposit of £550.00, which sum the Applicants had been entitled to retain in light of the Respondent's rental arrears, which leaves a total claim in this regard of £1,036.66.

In addition, the Applicants with reference to the various receipts provided sought £30.00 in relation to 4 hours they spent removing rubbish left by the Respondent in the back garden of the Property; £750.00 in respect of professional cleaning and repainting of the Property; £32.00 in respect of carpet cleaning; £312.00 for the replacement of a dog-urine soaked living room carpet; £50.00 for professional removal of other rubbish left in the Property; £10.00 for a plumbing repair to damaged pipework; £50.00 for an electrician's repair of damaged electrical fittings; £9.96 to replace a filthy shower curtain; £19.80 for smoke bombs purchased to fumigate the property and remove odours; £210.00 to replace a washing machine, fridge and cooker removed without authorisation; £165.00 for replacement of warped

and urine-soaked kitchen flooring; and £156.68 to repair a broken door lock, damaged living-room skirting and damaged hinges on a window.

This produced a total of £1,795.44 in this regard, which when added to the claim for rent arrears produced a total claim of £2,832.10.

### **Statement of Reasons**

Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

Accordingly, the Tribunal now has jurisdiction in relation to claims by a landlord (such as the Applicants) for payment of unpaid rental and damages against a tenant (such as the Respondent) under a short assured tenancy such as this.

The Tribunal considered the terms of the short assured tenancy agreement and the copy rent arrears statement provided, and was satisfied that this disclosed an outstanding balance of rent arrears in the sum sought of £1,536.66.

From the submissions of the Applicants, and the photographs of the Property which they showed the Tribunal, the Tribunal considered that the condition of the Property did not fall within normal wear and tear, and it was obvious that the Respondent had left the Property with significant damage which the Applicants incurred costs to rectify.

The Tribunal was satisfied from the evidence produced and submissions made by the Applicants that the sum of £1,795.44 is the cost incurred by the Applicants in rectifying the damage caused to the Property by the Respondent.

In these circumstances, the Tribunal considered for the above reasons that the sum of £2,832.10 is an appropriate award in this application, comprised of the rent arrears of £1,536.66, the sum of £1,795.44 in respect of the cost incurred by the Applicants in rectifying the damage caused to the Property by the Respondent, and under deduction of the retained deposit sum of £550.00.

The Tribunal noted that the Respondent's legal representatives, after taking instructions from the Respondent on the sums sought, confirmed that the Respondent was not defending this application.

### **Decision**

For the above reasons, the Tribunal will make an order for payment by the Respondent to the Applicants of the sum of £2,832.10.

### **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.

**N Kinnear**

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Legal Member/Chair

02/05/19

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Date