

**Housing and Property Chamber**  
First-tier Tribunal for Scotland



**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/18/2389**

**Re: Property at 45 Gardner Crescent, Whitburn, West Lothian, EH47 0NT (“the Property”)**

**Parties:**

**Mr Jim Meechan, Mrs Jackie Meechan, 61 Hamilton Gardens, Armadale, West Lothian, EH48 2JA (“the Applicant”)**

**Mrs Pamela Watt, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Steven Quither (Legal Member)**

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

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

**The Respondent is to pay to the Applicant the sum of ONE THOUSAND THREE HUNDRED AND EIGHTY NINE POUNDS (£1,389) ONLY.**

**1. BACKGROUND**

This application was made under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 seeking an order for payment of rent arrears arising out of a Short Assured Tenancy between the parties in respect of the subjects which commenced on 27 October 2014, in terms of which the Respondent agreed to pay rent of £550 per month.

In support of the application, the Applicant’s agents lodged the Tenancy Agreement, a rent statement showing rent arrears of £1794 and 3 separate invoices for work carried out to the subjects in the total amount of £775, from which total sum of £2569 was to be applied recovery of a deposit of £400, leaving a sum claimed of £2169.

Due to the Respondent vacating the subjects in or about June 2018 and no up to date address being known for her, today’s Case Management Discussion was

advertised on the Tribunal's website and I had available to me confirmation that this had been done between 8 and 25 March 2019, thus meeting the 14 day requirement in terms of Regulation 6A.

The Respondent did not attend or be represented today. In view of the foregoing procedure by advertisement, I was prepared to proceed in her absence and duly did so.

Prior to the CMD, the Applicant's agents had intimated an amended claim for £1499, reflecting said invoices but also sums paid to account of the rent arrears, reducing same to £1014, but also seeking additional sums of £30 for a trace fee for the Respondent and £80 for representation by the agents at today's CMD, a further copy of which amendment was helpfully made available to me today by said agents.

## **2. THE CASE MANAGEMENT DISCUSSION**

As indicated previously, the Applicant was represented by agents, who confirmed that due to payments having been made towards rent, this figure had reduced to £1014, all in terms of the up to date rent statement previously referred to.

In relation to the 3 invoices submitted, she advised:-

- a) The work carried out by Tommy's Handyman Services reflected repair work to make good items requiring attention after the Respondent left the premises and which only then became apparent due to the Applicant being declined access for 7/8 months or so to inspect the subjects during the tenancy. I clarified that this claim was made in terms of Condition 11.7 ("REFUSE") and Condition 15.5 ("PAYMENT FOR REPAIRS"),
- b) The work carried out by Lynn Jones reflected a deep clean necessitated by the Respondent having a pet dog at the subjects, for which no consent had been given in terms of Condition 13 ("PETS"), of which the agent attending today had first hand knowledge. I clarified that this claim was made in terms of that Condition.
- c) The work carried out by A.P.C Decor reflected redecoration carried out to kitchen and bedroom walls to restore them to their original magnolia after the Respondent had painted them, respectively, red and pink with glitter without the Applicant's consent in terms of Condition 11.5 ("ALTERATIONS"). I clarified that this claim was made in terms of that Condition.

In addition, the agent reiterated the claims for a trace fee and her own representation of the Applicant here today but confirmed that she did not have any invoice for the trace fee which would only be finalised whenever proceedings had concluded but which had nonetheless been necessitated by the Respondent and/or her partner failing to advise and confirm a forwarding address after moving out. She was not able to confirm if this would definitely be payable except in the event of a definite trace result

## **3. FINDINGS IN FACT**

I found it established that the sums now claimed for rent arrears and the work covered by the 3 invoices were properly due by the Respondent in terms of the Tenancy agreement between the parties but that the trace and representation fees were not so due.

## **4. REASONS FOR DECISION**

The rent arrears appeared properly due in terms of the parties' Tenancy Agreement and rent statement provided, but for a reduced amount of £1014 to reflect payments subsequently made.

Having regard to the Conditions of the parties' Tenancy Agreement referred to in Part 2 herein, these 3 charges totalling £775 appeared to me to be clearly covered and such that the Respondent would be aware of them. In the absence of any alternative position put by or on behalf of the Respondent to convince me otherwise, I had no difficulty accepting the position made out by the Applicant. The trace fee seemed to me to be unclear and not "crystallised" as yet so I did not feel it should be awarded. Recovery of such a fee did not appear to be covered by the Tenancy Agreement.

Similarly, I felt the representation fee was not recoverable from the Respondent, simply because these proceedings are intended to be "user friendly" and open and accessible to all, whether represented or not. It is a matter for any party to decide to seek representation if they so choose but I consider that any fee arising from that is strictly a matter between them and is not recoverable from an opponent. Again, the Tenancy Agreement makes no provision for parties' fees for representation or suchlike being recoverable from the other party.

## **5. DECISION**

**To make an order for payment by the Respondent of ONE THOUSAND THREE HUNDRED AND EIGHTY NINE POUNDS (£1389), being the £1789 as brought out in the preceding Part hereof reduced by recovery of the Respondent's deposit of £400, which the Applicant's agent confirmed would be applied to the total sum due.**

## **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.**

Steven Quither

**SR QUITHER  
Legal Member/Chair**

**16 APRIL 2019  
Date**