



**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/18/3123**

**Re: Property at 107 Park Street, Airdrie, ML6 0JP (“the Property”)**

**Parties:**

**Mr Peter Ngo, c/o Jewel Homes, Atrium Business Centre, North Caldeen Road,  
Coatbridge, ML5 4EF (“the Applicant”)**

**Mr Moussa Sylla, 78E Church Street, Coatbridge, ML5 3DP (“the Respondent”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member) and Jane Heppenstall (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondent of the sum of £2607.42 should be granted in favour of the applicant. The tribunal will issue an order for payment after consideration of any application for a time to pay direction received from the respondent following the issue of this decision. The tribunal also issues a direction to the parties regarding the time to pay application alongside this decision.**

**Background**

An application dated 19 November 2018 was received from the applicant seeking a payment order brought in terms of rule 70 (Application for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).

The applicant was seeking payment of a total sum of £8577.42 from the respondent in relation to the property, comprising £3102.42 in outstanding rent arrears; £5400 in respect of repairs resulting from alleged damage to the property; and £75 for tracing fees incurred in locating the respondent.

The application included copies of the tenancy agreement between the parties; a rent statement, showing the amount of rent outstanding as at 18 June 2018 as £3102.42; various photographs of the property showing the alleged damage; an invoice dated 24 August 2018 for various maintenance and repair works carried out at the property; and correspondence between the applicant's letting agent and a tracing agent dated 6 September 2018.

A case management discussion (CMD) was held on 22 January 2019. The respondent did not appear, and the tribunal granted an order against the respondent in favour of the applicant for the total sum claimed of £8577.02.

An application for recall of the decision was received from the respondent's solicitor on his behalf on 6 February 2019. A hearing on the recall application was held on 15 April 2019, and the tribunal granted the application. On the same date, the tribunal held a further CMD, at which the applicant was represented and the respondent was present. At the CMD, the parties agreed that they had entered into a tenancy agreement dated 27 April 2015, under which the respondent was due to pay £495 per month. The respondent accepted that he was in rent arrears of £3102.42 at the end of the tenancy. He disputed, however, that he was responsible for any of the damage claimed by the applicant and detailed in the repairs invoice dated 24 August 2018. He also disputed that he was due to pay the £75 cost of tracing agents, given that he was in communication with the letting agents.

The tribunal decided to fix a hearing to determine the following issues:

1. Whether the respondent caused the damage to the property during the tenancy as claimed by the applicant and detailed in the invoice of 24 August 2018.
2. If the respondent did cause any such damage, what sum if any should be awarded in respect of the repairs to the applicant.
3. Whether there should be any reduction in respect of betterment.
4. Whether the respondent was liable for the tracing agent's fees of £75.

The tribunal office wrote to the parties on 1 May 2019, informing them that a hearing would be held on 28 May 2019.

The tribunal issued a direction to the parties on 13 May 2019, requiring the applicant to provide by 21 May: copies of inspection reports/inventories obtained at the beginning and end of the tenancy; any further correspondence between the parties to support the applicant's claim in respect of the alleged damage; and any documentary evidence supporting the claim for tracing agent fees. It also required the respondent to provide any correspondence between himself and the applicant; or further documentary evidence regarding the state of repair of the property during his tenancy, and/or showing that he was in communication with the letting agent following the end of his tenancy. No response was received from either party to the direction prior to the date of the hearing.

## **The Hearing**

A hearing was held on 28 May 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The respondent was present and represented himself. The applicant was not present or represented. Having checked with the tribunal office, the tribunal was satisfied that there was evidence that the letter to the applicant's letting agent of 1 May 2019 confirming the date and time of the hearing had been signed for, as had the letter sent with the tribunal's direction of 13 May. The tribunal delayed the start of the hearing by 15 minutes, in case the applicant's representative had been detained. They did not appear, however, and no telephone calls or messages had been received from them. The tribunal was satisfied that the requirements of rule 24 of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a hearing had been duly complied with. The tribunal therefore proceeded with the hearing in the absence of the respondent, in terms of rule 29 of the 2017 rules.

The respondent told the tribunal that the property had been in poor condition when he moved into it in April 2015. He said that he had contacted the letting agent several times to complain about various issues, including damp throughout the property and a door which had fallen off, during his tenancy, which had not been attended to. He showed the tribunal messages on his mobile phone between himself and the letting agent dated 29 September 2017 and 26 January 2018 regarding these repairs. The message dated 26 January 2018 was accompanied by a number of photographs showing extensive mould in various rooms. He said that the letting agent had said he and his family needed to move out of the property so that the necessary repairs could be carried out. He said that he was not responsible for any of the repairs set out in the invoice of 24 August 2018, which included the removal of a damaged wet wall and tiles; the removal of a kitchen and installation of a new one; various decoration works; and removal and renewal of floor coverings.

He admitted that he owed the rent arrears claimed, and said that he had offered to repay these by instalments. The letting agent had seemed happy with this, but then the applicant had made the tribunal application also seeking payment for the repairs works. He said that he had paid a deposit of £495 at the start of the tenancy, as set out in the tenancy agreement. He had not received this back- he did not know which tenancy deposit scheme it had been paid into, but had been told by the letting agent that the deposit sum would go towards the money owed.

He said that he was not liable for the tracing agent fees- he said that it had not been necessary for the letting agent to employ a tracing agent, as he had been in contact with them following the end of his tenancy. He showed the tribunal a message from the letting agent dated 23 August 2018, asking him for his new address. He said that he had taken a letter into the letting agent's office about a week later confirming his new address. This was prior to 6 September 2018, the date on which the letting agent had instructed the tracing agent.

### **Findings in Fact**

- The tribunal was satisfied that there had been a valid short assured tenancy in place between the parties from 27 April 2015 until the respondent moved out on or around 18 June 2018.

- As at the date of the hearing, the respondent owed the applicant the sum of £3102.42 in rental payments.
- The respondent had paid a tenancy deposit of £495 to the applicant at the start of his tenancy.
- The respondent had complained to the applicant's letting agent about repairs issues within the property during his tenancy.

### **Reasons for Decision**

The tribunal did not accept that the respondent was liable to pay the £5400 claimed by the applicant in respect of repairs. The only evidence submitted by the applicant was the invoice dated 24 August 2018, and some undated, unreferenced photographs of the property. The tribunal found the respondent to be credible and reliable in his evidence that the property had been in poor repair during his tenancy, and that he was not responsible for the repairs issues. The tribunal does not therefore award any sum in favour of the applicant in respect of this claim.

The respondent accepted that he owed the rent arrears claimed, and said he was willing to pay this money back. He said that he had paid a tenancy deposit of £495, but had not received this sum back. There was no indication on the rent statement received from the applicant that the deposit had been deducted from the amount owed. In the absence of any other evidence regarding what had happened to the deposit, the tribunal considers it reasonable that the sum of £495 in respect of the deposit should be deducted from the rent arrears owed.

With regard to the tracing fee of £75, the tribunal was not satisfied on the basis of the evidence before it that this had been reasonably incurred by the applicant. It was clear that the respondent had continued to be in contact with the letting agent following the end of his tenancy, and the tribunal accepted his evidence that he had provided his address to the letting agent. The tribunal does not therefore award any sum in favour of the applicant in respect of this claim.

### **Decision**

The tribunal decided that an order should be granted for payment by the respondent to the applicant for the sum of £2607.42, being the rent arrears claimed of £3102.42 minus the deposit sum of £495. It did not grant an order immediately following the hearing, however. As the application was accepted prior to 6 March 2019, an application for a time to pay direction had not been sent to the respondent with the case papers. As the hearing took place after that date, however, the tribunal was required to bring to the respondent's attention the option of making such an application.

The chairperson explained to the respondent that, if he did not wish to make such an application, an order would be granted for the full amount, and it would be for the applicant to pursue the money from him. If he did wish to do so, he would need to complete an application, which would need to be considered by the tribunal and sent

to the applicant for his comments. The tribunal may then agree to a time to pay direction, if it was satisfied that in all the circumstances that it was reasonable to do so. If it did grant a time to pay direction, and he failed to keep up the agreed payments, he would be liable to pay the full amount awarded.

The respondent said that he did wish to apply for a time to pay direction. The tribunal did not consider that it was reasonable to expect him to complete the application at the hearing, and wished to give him the opportunity to seek advice on completing the form. Also as the applicant was not present, it was necessary to seek his views on any application made by the respondent.

The tribunal therefore issued a direction to the parties following the hearing, requiring the respondent to submit his completed application within 14 days, and for the applicant to respond to the completed application form within 7 days.

Once the timescale for complying with the direction has passed, the tribunal will consider the respondent's application and any response received from the applicant. It will then decide whether a hearing is required on the time to pay direction application. If the applicant does not object to the time to pay application within the timescale required, the tribunal will then make a decision on whether to accept or reject the time to pay application.

### **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.**

Sarah O'Neill

\_\_\_\_\_  
**Legal Member/Chair**

28/5/19

\_\_\_\_\_  
**Date**