



**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/18/3534**

**Re: Property at Flat 1 Castlehill House, 80 Falkirk Road, Larbert, FK5 3AH (“the Property”)**

**Parties:**

**Mrs Lesley Doherty, 4 Johnston Place, Denny, FK6 5HD (“the Applicant”)**

**Mr Adam English, Flat 1 Castlehill House, 80 Falkirk Road, Larbert, FK5 3AH (“the Respondent”)**

**Tribunal Members:**

**Lynsey MacDonald (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the order for payment should be granted.**

**1. Background**

- 1.1. The Applicant and Mr Michael Doherty sought an order for payment in respect of rent arrears and damage to the property. An application in terms of Rule 111 (Civil Proceedings in a Private Residential Tenancy) was received by the Tribunal on 17<sup>th</sup> December 2018.
- 1.2. The Applicant and Mr Michael Doherty also lodged an application for eviction.
- 1.3. The Applicant and Mr Michael Doherty lodged *inter alia* a copy of the lease, the notice to leave, a section 11 notice, a rent statement, bank statements, and quotes for remedial work.

- 1.4. The Tribunal initially fixed a Case Management discussion for 26<sup>th</sup> April 2019, however intimation upon the Respondent failed. There was a suggestion that the Respondent had moved out of the property, however his whereabouts could not be confirmed.
- 1.5. The Tribunal then fixed a Case Management Discussion in respect of each case for 17<sup>th</sup> June 2019 at 1400 hours. The Respondent was served with notice of the hearing by advertisement via the Tribunal website between 30<sup>th</sup> April 2019 and 17<sup>th</sup> June 2019. The Respondent was told that he required to attend the Case Management Discussion today, and was informed that the Tribunal could today make any decision on the applications that could be made at the full Hearing, if the Tribunal had sufficient information and considered that the procedure had been fair.

## 2. The Case Management Discussion

- 2.1. The Applicant and Mr Doherty attended the Case Management Discussion.
- 2.2. The Respondent failed to attend at the Case Management Discussion. The Tribunal delayed in calling the Case Management Discussion, in order to allow extra time for the Respondent to attend in the event that he was running late.
- 2.3. The Applicant and Mr Michael Doherty confirmed that the Respondent had not made any recent contact with them. They confirmed that they did not know whether the Respondent was still living within the property, although they suspected that he was spending time elsewhere as complaints by the neighbours had not been made recently. The Applicant and Mr Doherty invited the Tribunal to proceed in the absence of the Respondent, and to grant both orders. The Tribunal was satisfied that appropriate notice had been given to the Respondent, and that it was fair to proceed in his absence.
- 2.4. The Tribunal proceeded on the basis of the written documents which had previously been lodged, together with oral submissions from the Applicant in respect of those documents. In addition, the Tribunal considered photographs of the property which were presented to the Tribunal.
- 2.5. As a preliminary matter, the Applicant confirmed that Mrs Lesley Doherty was the only landlord named in the tenancy agreement, and the applications ought to proceed in her name only. The Tribunal allowed the applications to be so amended.
- 2.6. The Applicant confirmed that no rent payments had been made since 1<sup>st</sup> September 2018, and that the rent outstanding was £3,850. The Applicant also confirmed that she had been unable to carry out remedial work, as the Respondent had not returned the keys for the property, and she did not know whether he still lived there or not.

### 3. Findings in Fact

- 3.1. The Applicant and the Respondent entered into a private residential tenancy agreement on or around 28<sup>th</sup> March 2018.
- 3.2. The tenancy agreement made specific provision that at the end of the tenancy carpets were to be cleaned and paintwork returned to the colour and condition as at the start of the tenancy.
- 3.3. The rent payable was £425 per calendar month.
- 3.4. The Respondent made rent payments in respect of rent due until September 2018. Until September 2018, the Respondents payments were frequently paid in various smaller sums, however these amounted to the whole amount of rent due. In September 2018 the Respondent made a rent payment of £400. The Respondent made no further payments in respect of the property.
- 3.5. On the date of the Case Management Discussion, the Respondent had not returned the keys to the property to the Applicant.
- 3.6. On the date of the Case Management Discussion, nine months' rent was outstanding.
- 3.7. The Respondent had painted parts of the property in bright colours, having previously been neutral colours. The Respondent had caused other marks to the walls.
- 3.8. The Respondent had placed and subsequently removed fixtures, leaving numerous holes in the walls.
- 3.9. The Respondent had caused stains to the carpets, including but not limited to *Im Bru* stains. The carpets had not been cleaned.
- 3.10. The Respondent had broken a mirror, which had not been fixed or replaced.
- 3.11. The Respondent had broken a bath panel, which had not been fixed or replaced.

### 4. Reasons for Decision

- 4.1. There was nothing before the Tribunal challenging or disputing any of the evidence before it.

- 4.2. The Tribunal accepted the evidence of the Applicant that the sums sought by way of rent arrears were due under the terms of the lease.
- 4.3. The Tribunal accepts that the damage caused to the property by the Respondent is in excess of what could be considered reasonable wear and tear. Under the terms of the lease the Respondent was liable for the damage to the property.
- 4.4. In respect of the redecoration of the property, the Tribunal accepted that the redecoration was necessary. The property had previously been decorated in neutral colours. The Respondent's decoration was of a kind which would not appeal to everyone. Further, the Tribunal accepted that, having carried out the redecoration himself, the Respondent's decoration was of a noticeably lower standard than it had been. The Applicant provided a quote for the necessary work in the sum of £900. The Tribunal accepted that this quote was reasonable.
- 4.5. In respect of the staining to carpets, the Tribunal accepted that, at a minimum, the carpets required to be cleaned. The Tribunal took into consideration that the opinion of the carpet cleaner was that it was likely that cleaning would not remove many of the stains. The Tribunal was accordingly mindful that it was likely that the carpets would require to be replaced. However, the Tribunal considered that it would be unfair to the Respondent to grant an order for payment which included the cost of replacing the carpets, as the Applicant had not given notice of such a claim to the Respondent (the application being restricted to cleaning of the carpets). The Applicant provided a quote for the necessary work in the sum of £110. The Tribunal accepted that this this quote was reasonable.
- 4.6. In respect of damage caused to a bathroom mirror and a bath panel, the Tribunal accepted that these items required to be replaced. The Applicant provided quotes for the replacement of these items at a cost of £50.85 and £49.11 respectively. Whilst it may be possible for the Applicant to source alternative items at different prices, the Tribunal accepted that these quotes were reasonable.

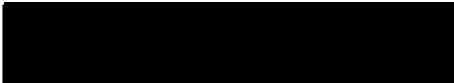
## 5. Decision

- 5.1. The Tribunal grants the order for payment in the amount of £4959.96, which reflects £3,850 in respect of rent arrears, and £1,109.96 in respect of rectifying damage to the property.

## 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.**



**Legal Member/Chair**

*17/06/19*

**Date**