

**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 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/22/0602**

**Re: Property at 77 Invercauld Road, Aberdeen, AB16 5RD (“the Property”)**

**Parties:**

**Mrs Anastasia Kerkesner, 12 Grandholm Way, Aberdeen, AB22 8AF (“the Applicant”)**

**Mr Kevin Taylor, 8 Upper Mastrick Way, Aberdeen, AB16 5QF (“the Respondent”)**

**Tribunal Member:**

**Valerie Bremner (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 Eleven Thousand Nine Hundred and Nineteen Pounds Only (£11919.00) be granted in favour of the Applicant and against the Respondent.**

**Background**

1.This application for a payment order in terms of Rule 111 of the Tribunal rules of procedure was first lodged with the Tribunal on 2nd March 2022 and accepted on April 22<sup>nd</sup> 2022.A case management discussion was set for the 17th of June 2022 at 11:30 am.

2.The case management discussion on that date was attended by Ms Maltman of Blackadders solicitors on behalf of the Applicant and the Respondent attended and represented himself.

3.The Tribunal had sight of the application, a paper apart, a tenancy agreement and schedule, confirmation of the Applicant being appointed as Executor Dative for the estate of the deceased landlord Mr Vasilyev, and a rent statement.

The Application referred to an email dated 4<sup>th</sup> January 2022, but the Tribunal chair did not have sight of this, but the Respondent confirmed that he had sent an email dated 4<sup>th</sup> January 2022 giving notice to terminate the tenancy at the property.

4. There was an issue regarding the amount being sought by way of payment order by the Applicant and the rent statement appeared to have an inaccurate total for the sum said to be due. The Respondent's position was that some rent was due by him, but he believed that some £2000 of work done by him for the deceased landlord fell to be set off against the total sum being requested and he also suggested that the monthly rent had been reduced at least a year before the end of the tenancy from £800 to £700 per month. The Respondent indicated that he could provide text messages regarding the work done but that his phone had broken and he hoped to recover these and present screenshots of the messages between himself and the deceased landlord which would confirm the additional work done. He hoped to have these in a few weeks.

5. The case management discussion was continued to 29<sup>th</sup> July 2022 at 2pm to clarify the sum being sought by the Applicant and for the Respondent to provide messages which he said would demonstrate that additional work done by him for the deceased landlord fell to be set against the sum said to be due in unpaid rent and also further detail as to when the rent was reduced which the Respondent indicated was at least a year before the end of the tenancy. The Tribunal issued a Direction to parties requiring this information to be provided.

### **The Case Management Discussion on 29<sup>th</sup> July 2022**

6. At the case management discussion on 29<sup>th</sup> July 2022 Ms Maltman of Blackadders Solicitors again appeared on behalf of the Applicant. There was no appearance by or on behalf of the Respondent. The Tribunal adjourned briefly to confirm whether the Respondent had been given notice of the date of the case management discussion and it was confirmed that the date of the case management discussion had been intimated to the Respondent by post and the letter had been signed for at his address as delivered on 2<sup>nd</sup> July 2022.

7. Ms Maltman moved the Tribunal to proceed in the absence of the Respondent given that he was aware of the date but had not attended or arranged representation. The Tribunal was satisfied that the Respondent was aware of the application as he had attended at the first case management discussion but noted that he had failed to respond to the Direction of the Tribunal and had not attended the case management discussion or made any contact to advise of any reason why he could not attend. In these circumstances the Tribunal legal member considered that fair notice had been given and that it was appropriate to continue in the absence of the Respondent.

8. The Tribunal had sight of the same papers as before but in addition there had been lodged on behalf of the Applicant an email with further representations and an up to date rent arrears statement.

9. The Applicant as the joint owner of the property and as Executor Dative for the deceased landlord was now seeking a payment order in the reduced sum of £11919.00. This sum had been checked and was believed to be accurate, and had been adjusted to reflect £800 of work done by the Respondent for the deceased landlord in relation to the fitting of a floor which had been agreed in October 2019. The Deposit of £800 paid by the Respondent had also been set against the sum

outstanding. The Applicant had no knowledge of the claim by the Respondent to set around £ 2000 of further work against the rent arrears but the solicitors who represent the Applicant had written to the Respondent before the Tribunal proceedings commenced on the issue of sums which might have been required to be set against the rent arrears but had received no reply. The rent was reduced by the Applicant to £700 per month in July 2021 but the Applicant had no record of any agreement to reduce the rent before this date which had been entered into by the deceased landlord Mr Vasilyev and the Respondent.

10.The Applicant's position was that arrears of rent accrued during the tenancy and in July 2021 the rent was reduced to try to assist the Respondent. At this time there was also an agreement made between the parties to pay the arrears off at £300 per month. The Respondent did not make payment of the arrears and rent as agreed and the tenancy was brought to an end by him on 31<sup>st</sup> January 2022.

11.The Applicant sought a payment order in relation to the rent arrears in these circumstances.

12.The Tribunal considered that it had sufficient information upon which to make a decision and that the proceedings had been fair.

## **Findings in Fact**

13.The Applicant is the joint owner of the property, wife of the late Alexey Vasilyev and Executor Dative of his estate.

14 The Applicant was appointed as Executor Dative of the estate with effect from 31<sup>st</sup> August 2021.

15.Mr Alexey Vasilyev, now deceased, entered into a tenancy at the property with the Respondent from 21<sup>st</sup> July 2019.

16.Initially the monthly rent payable in terms of the tenancy agreement was £800 per month but this was reduced with effect from July 2021 to assist the Respondent.

17.As well as reducing the rent to £700 per month from July 2021 it was agreed between the parties that the rent arrears would be paid off at the rate of £300 per month.

18.Rent arrears during the tenancy continued to rise and the arrears were not paid off as agreed.

19. The Respondent gave notice to end the tenancy in January 2022 and it ended on 31<sup>st</sup> January 2022.

20.A deposit of £800 paid by the Respondent has been recovered and set against the sum due by way of rent arrears.

21.The sum of £800 in relation to flooring work done by the Respondent for the deceased landlord has been credited to the total rent arrears due.

21. The rent arrears accrued during the tenancy with these deductions amounts to £11919.00 and this sum is lawfully due by the Respondent to the Applicant.

### **Reasons for Decision**

A large sum in rent arrears had accrued during this tenancy and the landlord had died. His wife as joint owner of the property and Executor Dative of his estate is entitled to recover the sums due in terms of the tenancy agreement. Efforts had been made to assist the Respondent by cutting the rent and agreeing a payment plan for the arrears but he had not paid the rent and arrears as agreed. He had attended the first case management discussion and indicated he could provide proof of further work he had done for the deceased landlord to be set against the arrears and a different date for the rent reduction, but he failed to provide any information after a Direction was issued and did not attend the case management discussion on 29<sup>th</sup> July. When he did attend, he accepted that rent arrears were due, but he simply disputed the amount. The Tribunal Legal member considered that in these circumstances it was appropriate to grant the order as requested for an amended sum, less than that which was originally requested. It is of course open to the Respondent to request a review or recall of this decision as appropriate and he also has the right of appeal as set out below.

### **Decision**

The Tribunal granted a payment order in favour of the Applicant and against the Respondent in the sum of eleven thousand nine hundred and nineteen pounds only (£11919.00).

### **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.**

Valerie Bremner

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Legal Member/Chair

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Date 29.7.22