



**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 (Act)**

**Chamber Ref: FTS/HPC/CV/20/0391**

**Re: Property at 10 Monkton Crescent, Coatbridge, ML5 5GA (“the Property”)**

**Parties:**

**Mr John Paul Clark, 15 Devenick Drive, Portlethen, Aberdeen, AB12 4NG (“the Applicant”)**

**Ms Sharon Wright, 1 Calder Court, Coatbridge, ML5 4ET (“the Respondent”)**

**Tribunal Members:**

**Alan Strain (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent pay (1) the sum of £1,824.87 in respect of rent arrears; (2) the sum of £257 in respect of damage to the Property; and (3) interest on the sum of £1,824.87 at the rate of 4.1 per cent.**

**Background**

This is an application under Rule 111 of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (Rules)* and section 71(1) of the Act in terms of which the Applicant seeks payment of rental arrears and damage to Property from the Respondent.

The Tribunal had regard to the following documents which had been lodged in advance of the Hearing:

1. Application dated 27 February 2020;
2. Photographs;
3. Statement of Rent paid;
4. Statement of Rent due;
5. CMD Note dated 17 August 2020;

6. Direction dated 17 August 2020;
7. Short Assured Tenancy Agreement (**SAT**) commencing 22 January 2018;
8. Bank Statements;
9. Additional Photographs;
10. Written Submissions of Applicant dated 27 August 2020;
11. Written Submissions of the Respondent dated 10 August 2020;
12. Copies of Bank Statements of the Respondent;
13. Written Submissions of Applicant dated 29 September 2020;
14. Written Submissions of the Respondent dated 4 November 2020 enclosing copy bank statements;
15. Written Submissions of Applicant dated 4 November 2020 with attachments;
16. Amended CMD Note dated 5 November 2020.

The case had called for a CMD on 5 November 2020.

At the CMD the Parties had agreed the amount of rent claimed outstanding by the Applicant and the Respondent submitted that a further amount of £750 had been paid in cash to the Applicant's sister on the dates and in the amounts stated in the Written Submissions of 4 November 2020.

The cash payments were disputed by the Applicant.

The Respondent denies responsibility for the damages/repairs claimed by the Applicant.

The Parties dispute entitlement to interest on any outstanding rent.

The following facts were agreed:

1. The Parties entered into an SAT commencing 22 January 2018 which terminated on 9 February 2019;
2. The monthly rent was £600;
3. The Respondent paid the sum of £5,750.00 directly into the Applicant's bank account in respect of rental payments and deposit of £600 during the tenancy;
4. The total rent due during the tenancy was £7,574.87;
5. The balance claimed by the Applicant was £1,824.87.

The following issues were identified as being in dispute:

1. Whether the Respondent made cash payments totalling £750 to the Applicant's sister as stated in the written submissions dated 4 November 2020;
2. Whether the Respondent was liable for the costs of the repair to the damage to the Property claimed by the Applicant;
3. If so, whether the sum claimed is reasonable and ought to be paid by the Respondent;
4. Whether interest at the rate of 5% is due on the rental arrears.

## **Hearing**

The Applicant participated and represented himself. The Respondent participated and was represented by Mr Melvin, an advice worker with CAB.

At the outset the Tribunal explained the purpose of the Hearing, the procedure to be followed and the points in dispute between the Parties.

The Parties identified that the Applicant, his sister and the Respondent would all give evidence.

## **Applicant**

The Tribunal heard from the Applicant. The relevant and material parts of his evidence were to the effect:

- (a) The Respondent had paid the deposit and first months' rent in cash (£1,200) for which receipts had been issued;
- (b) Neither he nor his sister had received the cash payments claimed to have been made by the Respondent;
- (c) The damage to the door and the hole in the wall depicted in the photographs produced were caused by the Respondent and the cost of their repair was £257;
- (d) He could not produce receipts for the payment as the repairs had been carried out by one of his tenants and he had simply deducted this sum from their rent;
- (e) Interest was due at the rate of 4 per cent above base on the rent arrears as this was the rate specified in the SAT Clause 5.1.

## **Ms Catherine Kelly**

Ms Kelly's evidence, in so far as relevant and material, was:

- (a) She had managed the Property on Mr Clark's behalf;
- (b) The Respondent had paid the deposit and first months' rent in cash (£1,200) to her, for which receipts had been issued;
- (c) She had only met Ms Wright a few times and had not received any further cash payments from her as claimed;
- (d) She attended the Property on 9 February 2019 to collect the keys and had observed the hole in the plasterboard wall but not the door;
- (e) She had not agreed with the Respondent that she did not need to do anything to repair the hole in the wall as claimed.

## **The Respondent**

The Respondent's evidence, in so far as relevant and material, was:

- (a) She had made the cash payments of £750 referred to in written submissions;
- (b) These payments had been made due to inability to go the bank and process the payments;
- (c) She had contacted Ms Kelly who had either called round or collected the cash payments from her place of work and not issued a receipt;

- (d) She had applied for Housing benefit but due to the Applicant's not being willing to provide an address the benefit had not been granted;
- (e) She could not recall if she had received a back payment of Housing Benefit or how much the Housing Benefit had been as it varied;
- (f) If the cash payments had not been made why had the Applicant waited until December 2018 to pursue the rent due;
- (g) She had damaged the plasterboard in the wall when moving out and had polyfilla with her to fix it on 9 February. She had been told by Ms Kelly not to bother fixing it as it was ok.

## **Submissions**

Both Parties were invited and took the opportunity to make submissions.

## **Decision and Reasons**

The Tribunal, in so far as relevant and material, made the following findings in fact from the oral and documentary evidence before it:

1. The Parties entered into an SAT commencing 22 January 2018 which terminated on 9 February 2019;
2. The monthly rent was £600;
3. The Respondent paid the sum of £5,750.00 (apart from the first months' rent) directly into the Applicant's bank account in respect of rental payments and deposit of £600 during the tenancy;
4. The Respondent had been given receipts in respect of the initial payments of her deposit and first months' rent;
5. The total rent due during the tenancy was £7,574.87;
6. The balance of rent outstanding at the end of the tenancy was £1,824.87;
7. At the end of the tenancy the Respondent had damaged the Property by causing a hole in the plasterboard above a light switch and damaging a door in the Property as depicted in the photographs lodged by the Applicant;
8. The Applicant had paid the sum of £257 in respect of the repairs to the door and the plasterboard;
9. The SAT between the Parties provided for interest at 4 per cent above the Bank of Scotland Base Rate at Clause 5.1.

### Rent Arrears

The Tribunal accepted and preferred the evidence of the Applicant and Ms Kelly where it contradicted the evidence of the Respondent. Both the Applicant and Ms Kelly gave their evidence in a straightforward, credible and reliable manner. Their evidence was consistent with the position put forward to the Tribunal and supported by the documentary evidence such as the photographs, the SAT and bank statements.

On the other hand the Tribunal did not consider the Respondent's evidence to be credible or reliable with regard to the cash payments or the damage to the Property. The Respondent's position was that she had made the cash payments to Ms Kelly who had collected them from her at the Property and at her place of work. No

receipts were obtained. The Tribunal did not find this credible or reliable. In fact, this version of events contradicted what had happened at the outset of the tenancy whereby the Respondent had paid the deposit and the first month's rent in cash. She had obtained receipts. The Tribunal did not accept that the Respondent would have made these payments and not obtained receipts.

Furthermore, the Tribunal noted that the Respondent's position was she had applied for Housing Benefit but had been unable to get this due to the Applicant not providing an address. She contradicted this by later saying she had received Housing Benefit – although she could not confirm the amounts and whether or not she received a backdated payment. The Tribunal found this evidence to be neither credible nor reliable.

#### Damage to Property

The Respondent accepted the damage to the plasterboard and how this had been occasioned. She did not accept the damage to the door. The Tribunal did not accept the Respondent's evidence that Ms Kelly had told her not to repair the damage to the plasterboard or that she had not damaged the door. Once again, the Tribunal preferred and accepted the evidence of the Applicant and Ms Kelly for the reasons stated above.

Whilst there was only the oral evidence of the Applicant with regard to the cost of the repairs to the plasterboard and the door the Tribunal accepted the Applicant's evidence. It did not appear to the Tribunal to be an unreasonable cost given the repairs that were carried out.

#### Interest on Rent Arrears

In so far as interest on the rental arrears was concerned the Tribunal found that the SAT at Clause 5.1 clearly entitled the Applicant to interest at the contractual rate.

### **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.**

**Alan Strain**

**10 December 2020**

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**Legal Member/Chair**

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**Date**