



**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/19/3480**

**Re: Property at 34 Lindores Drive, Kirkcaldy, KY2 6PQ (“the Property”)**

**Parties:**

**Mr Walter Rowan, Mrs Karen Rowan, 4 Woodlands Gait, Cluny, Fife, KY2 6NS  
 (“the Applicant”)**

**Ms Rose Macrae, 15C Hanover Court, Glenrothes, KY7 5SB (“the Respondent”)**

**Tribunal Members:**

**Richard Mill (Legal Member) and Elizabeth Dickson (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment against the Respondent be made in the sum of Ten Thousand and Twenty Pounds Sterling (£10,020) together with interest thereon at the rate of 3% per annum until payment**

**Introduction**

1. This is an application under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and section 16 of the Housing (Scotland) Act 2014 in which the applicants seek an order for payment which relates to the former residential tenancy agreement which was in existence between the parties.
2. The applicants are Mr Walter and Mrs Karen Rowan, who are spouses. The respondent is Ms Rose Macrae. The respondent’s husband, James Macrae, is the brother of the second applicant, Karen Rowan.

### Procedural history

3. The application was made to the tribunal on 30 October 2019. It related to rent arrears only at that stage. A Case Management Discussion (CMD) was held on 15 January 2020. The applicants were represented by Messrs Smith and Grant, solicitors at that time. It was identified that there was a material dispute between the parties regarding the level of rent arrears and further that the applicants had not lodged any formal rent statement to vouch the arrears. The case was allocated to a full hearing with both parties directed to provide all evidence and witness lists by close of business on Friday 7 February 2020.
4. Following the CMD in January 2020 the applicants lodged a number of other items which fell short of meeting the requirements of the direction issued on 15 January 2020. This comprised a written submission, bank statements, a summary of rent payments and an exchange of text messages between the parties. The respondent did not lodge any documents. A full hearing was assigned to take place on 17 March 2020. The applicants sought an adjournment of that hearing on the basis that they were to be on holiday. The application to adjourn the full hearing on 17 March was granted. Delay then arose due to covid-19 restrictions.
5. A fresh full hearing was assigned to take place on 6 August 2020. The applicants joined the teleconference hearing themselves personally. By that stage they were no longer legally represented. The respondent did not join the teleconference. The Tribunal was advised by the first applicant that the respondent had left the property on 12 March 2020. This followed an eviction order being granted by the Tribunal under reference FTS/HPC/EV/19/3479 on 15 January 2020. Intimation of the full hearing on 6 August 2020 had been undertaken by recorded delivery at the property which the respondent had vacated. The post office track and trace system suggested that service was successful upon the respondent on 14 July 2020 but given the explanation by the first applicant this simply was not possible. It was noted that the applicant's daughter now resides in the property. The Tribunal on that day was not satisfied that the respondent had received intimation of the full hearing. She had no opportunity to participate. She had participated in the earlier CMD on 15 January 2020. The Tribunal could not fairly determine the application in the absence of affording the respondent the fullest opportunity to participate and state her case. There was no alternative but to adjourn further consideration of the application in the circumstances.

6. A fresh full hearing was fixed to take place on 16 September 2020. Sheriff Officer delivery and intimation was thereafter effected upon the respondent at her new address of 15C Hanover Court, Glenrothes on 21 August 2020. This is certified.
7. On 1 September 2020 the Tribunal received further communications on behalf of the applicants. They had reinstructed their former solicitors, Messrs Smith & Grant. It was stated that they wished to make an amendment to their application by increasing the sum sought.
8. The Tribunal were concerned about the approach taken by the respondents and their legal representative in advance of the full hearing fixed to take place on 16 September 2020. It did not appear that the applicants or their representative were aware of the relevant tribunal rules. It was suggested that the amendment to the sum sought which related to rent arrears, was being *attempted* to be intimated to the respondent. There is a clear requirement and obligation to intimate in terms of Rule 14A that fourteen days' notice requires to be given. Following further clarification, fourteen days' notice could not be given before the hearing fixed to take place on 16 September 2020. Additionally, the amendment also raised a 'new issue'. At the time of the original application being lodged, the application related solely to arrears of rent. What was now proposed was that the payment order sought was to include a second substantial head of claim amounting to £8,000, relating to the expense alleged to have been incurred by the applicants in making good damage caused to the property by the respondent. Rule 14A does not cover such an amendment. Rule 14 does. After seeking further clarification from the respondent's solicitor, the Tribunal issued a direction on 7 September 2020 postponing the full hearing on 16 September 2020, and requiring within fourteen days the applicants and or their representative to lodge a full and detailed written submission detailing all heads of claim providing full specification of all claims, together with all documentary evidence to be relied upon to support such claims and to provide written witness statements of the applicants and any other witnesses relied upon. All documents required to be indexed and paginated. The documentation required to be accompanied by a written application seeking to amend the original application in terms of both Rules 14 and 14A. The applicants and/or their representative were required to intimate all documents to the respondent by recorded delivery or Sheriff Officer delivery and produce evidence of services within 21 days of the date of the direction.
9. By way of letters dated 23 September 2020 the fresh full hearing assigned to take place on 26 October 2020 at 10am was intimated to both parties by the Tribunal by recorded delivery. The respondent signed for the letter on 24 September 2020. This is evidenced by the post office track and trace certification.

10. By email on 25 September 2020, the applicants solicitors, Messrs Smith & Grant, intimated that they were withdrawing from acting again (for a second occasion). They did submit an application to amend, both in terms of Rule 14 and 14A, and lodged an inventory of productions which comprised a number of invoices, together with a letter of intimation by the applicants to the respondent and her husband dated 30 August 2020. No proof of service of this letter was produced nor were any witness statements produced as was required in terms of the direction. The direction issued by the Tribunal had not been fully complied with. Intimation of the amendments, together with the documents lodged in support were intimated to the respondent directly by the Tribunal by recorded delivery on 29 September 2020. This was successfully delivered to the respondent on 1 October 2020. This is evidenced by the post office track and trace certification.

#### The tenancy

11. A copy of the tenancy agreement said to exist between the parties has been produced. It is not a signed copy. The property address is 34 Lindores Drive, Kirkcaldy KY2 6PQ. It is stated that the tenancy commenced on 1 July 2014 and that the rent was fixed at £550 per month. The tenancy was a short assured tenancy.
12. The fact that there is no signed tenancy agreement in existence does not matter. It is clear that the parties agree that the respondent was renting the property. She (and her husband) occupied the property and were paying rent, at least from time to time. Despite the unsigned written tenancy agreement stipulating that the rent was to be £550 per month, the applicants maintain that only £500 per month (or a weekly equivalent) was ever charged. The respondent also agreed that this was the level of rent being charged at the CMD in January 2020.
13. It is clear that the arrangement between parties was less than formal. This is partly explained by their family relationships. Some of the rent charges were not insisted upon as a consequence of the respondent's husband's James Macrae undertaking work in lieu of rent being paid. The applicants accept that no formal rent record was kept throughout the years.
14. This application in which an order for payment is sought was lodged at the same time as an application for eviction. An initial CMD took place in both cases on 15 January 2020. At that time an eviction order was granted against the respondent under reference FTS/HPC/EV/19/3479.

### The application

15. In terms of the original application to the Tribunal, the applicants sought a sum of £4,920 plus interest at 8% per annum relating to rent arrears. In terms of the up to date supplementary submission lodged on behalf of the applicants in February 2020, it was suggested that the arrears due to them had risen to £6,630.
16. In terms of the recent Rule 14 and 14A amendment received in late September 2020 the applicants increased the amount which they were seeking from the respondent. This is broken down into two components. The claimed rent arrears increased to a sum of £7,320. Additionally, the applicants seek an additional sum of £8,000 (being the new issue for the purposes of Rule 14) representing the costs which they say were incurred as a consequence of making good damage in the property which included repairs and renewals. The total sum sought is now therefore £15,320.

### The documentary evidence

17. The applicants have not produced any detailed document which records the dates of the monthly rent charges arising and the corresponding sums of rent paid by the respondent or received in terms of relevant Universal Credit payments. In February 2020 the applicants' solicitor lodged a 'Payment Record'. This details both the monies paid and the monies owed for the period commencing on 8 September 2018 through to 31 January 2020. This breakdown of the figures discloses the sum of £6,630 outstanding, being the sum which was sought in February 2020 by way of amendment.
18. The Bank of Scotland bank statements can only partially vouch matters as rent was being paid by cash and some rent was cancelled due to the respondent's husband performing work for the first applicant. The earliest statements are over the period commencing on 8 March 2018. The Bank of Scotland account is held in the name of the second applicant, Mrs Karen Rowan, only. This is used as a business account. This shows payments from other sources but no regular rent payments from the respondent.
19. Various text messages exchanged between the parties were produced by the applicants. It is clear that these are not a full record of all communications between the parties. It is evidenced from the exchange of messages that the parties were corresponding about the respondent's arrears of rent for a lengthy period of time.
20. At the time of the recent amendment in terms of both Rule 14 and 14A, the applicants lodged a total of four invoices relative to their claim to have incurred substantial costs for renovating the property after the respondent's departure. These invoices comprise of the following:-

- i. An invoice from Montgomery Plumbing and Painting dated 1 April 2020. This details that a new kitchen and bathroom were fitted, together with the supply and fitting of new doors, filling damaged walls in the house and painting damaged walls. The total cost is £2,700.
  - ii. An invoice from SR Recycle dated 1 April 2020. This is said to relate to the full removal of mixed waste from the front and rear garden, garage and house. The total cost is £800.
  - iii. Invoice from Schon Kitchens dated 28 August 2020 in the sum of £3,300.
  - iv. An invoice from Fife Carpet Mill Ltd dated 8 April 2020 in respect of the supply and fit of new carpet to stairs, hallway and three bedrooms and to the supply and fit of laminate flooring to hall, living and kitchen at a total cost of £1,200.
21. During the course of the evidential hearing it became apparent that the applicants had earlier provided a substantial number of photographs of the condition of the property to their now former solicitors which had not been lodged with the Tribunal. In the circumstances, an adjournment was allowed for a period of time to enable such photographs to be submitted and considered fully by the Tribunal. Ultimately a total of eighteen separate emails which comprised over fifty photographs in total were submitted.

#### The hearing

22. The evidential hearing took place on 26 October 2020 at 10.00 am. Both applicants participated in the teleconference hearing personally. The respondent did not join the hearing. The Tribunal was satisfied that the respondent was well aware of the hearing and had chosen not to participate. There was no barrier to her participation.
23. The Tribunal afforded a considerable degree of flexibility given that the applicants were unrepresented. The Tribunal made inquiry with the applicants regarding both components of their claim, firstly in relation to the rent arrears and secondly in relation to the additional sums which they say were incurred solely due to the acts of omissions of the respondent.
24. The applicants were thereafter afforded the opportunity of giving any further evidence which they wished and to make concluding submissions.
25. The Tribunal reserved its decision.

## Findings and Reasons

26. The Tribunal was satisfied that it had sufficient evidence upon which to reach a fair determination of the application.
27. The respondent's position, (as noted directly from her at the first CMD on 15 January 2020), is that she accepted that she was in arrears of rent to some extent occasioned by her son turning 19 and this having an effect on her benefits. She disputed the sum originally sought. The second head of claim relating to damage was not live at that stage. Her views and position on the application is otherwise unknown. She has had every opportunity to state and vouch her position but has failed to do so.
28. The Tribunal found both applicants to be credible and reliable witnesses. The oral evidence which they provided to the Tribunal was clear, consistent and detailed. It was also consistent with the entirety of the documentary evidence available. The Tribunal attached weight to the oral evidence of both applicants and all of the documentary evidence. This was unchallenged.
29. The property is 34 Lindores Drive, Kirkcaldy KY2 6PQ. The applicants are the heritable proprietors. They purchased the property in or about 2010. They have never lived in the property. Up to 2014, the second respondent's sister lived in the property. In 2014 the respondent moved into the property. She is named as the sole tenant in terms of the written lease, but she and her husband, James Macrae, rented the property jointly. Mr Macrae is the brother of the second applicant.
30. The applicants, who were the landlords under the lease, also let out 3 other residential properties. They are registered landlords and are experienced in acting as landlords. They used a standard written lease which was adapted for the purposes of the tenancy which they entered into with the respondent and her husband. This was a short assured tenancy. Despite the written lease suggesting that the sum of £550 was paid by way of deposit, no deposit was in fact paid. It had initially been intended that the monthly rent would be £550. This arrangement only lasted for a brief period of time due to the respondent and her husband's inability to pay that sum. It was thereafter agreed between the parties that the monthly rent would be reduced to £500 per month. In fact, as time progressed, a weekly equivalent rent was agreed between the parties in the sum of £120 per week.
31. The respondent and her husband were often paying rent late. At times they were in receipt of state benefits. From time to time, Universal Credit payments were paid to the applicants from the DWP in respect of rent due. On occasions the respondent's husband would carry out roofing work for the

first applicant's roofing business in lieu of rent paid. This would be calculated at a rate of £100 per working day to reduce rent arrears.

32. As at 1 September 2018 the respondent and her husband were up to date with their rent. Any Universal Credit payments paid directly or indirectly to the applicants ceased in September 2018. A total sum of £2,130 between 8 September 2018 and 1 May 2019 was paid in rent. This was short of the total rent due. All rent payments paid by the respondent and her husband to the applicants ceased in May 2019. When the respondent and her husband vacated the property on 12 March 2020, the total balance of outstanding rent arrears had increased to £7,320.
33. The applicants are entitled to recover arrears of rent lawfully due under the lease arrangement in operation. They are entitled to recover the sum of £7,320 which is adequately vouched and explained.
34. Photographs have been produced in respect of the general condition of the property and the rubbish left in the garden area. The applicants also refer to a garage full of rubbish and motor parts which were required to be removed at the end of the tenancy. An invoice for disposal of these items in the sum of £800 has been produced. Given the photographic evidence vouching the extent of the items, the detail of the invoice and the applicants' explanations, it is reasonable that they recover the costs associated with the removal of these items which is £800.
35. A new bathroom had been installed when the applicants bought the property in 2010. At the time that the respondent and her husband moved into the property in 2014, a new kitchen was installed into the property and new floor coverings fitted throughout. Bathrooms and kitchens would be expected to have a lifespan of around 10 years in a tenanted property. During the time of the respondent and her husband's occupation of the property, the condition significantly deteriorated beyond that which could be termed as fair wear and tear. This vouched in terms of the photographs which have been produced.
36. The majority of the floor coverings in the whole house had been removed by the applicant and her husband on or prior to their departure. This was primarily due to damage caused by their dog. None of the floor coverings were either preserved or capable of being cleaned or salvaged. The applicants have vouched that new floor coverings were fitted throughout the home after the respondent and her husband's departure from the property. The total cost of these replacements was £1,200.
37. The carpets and other floor coverings were new in 2014. The tenancy was of 6 years duration. It would be reasonably expected that the lifespan of the laminate flooring and carpets within the property would have a lifespan of 8 years. The tenancy lasted for 6 years. There would only reasonably have



been around 2 years life left in the floor coverings. The replacement floor coverings cost £1,200. The applicants' loss therefore is reasonably assessed at £300 being 2 years loss or one-quarter of the lifespan of the floor coverings.

38. The applicants seek to recover the costs of the supply of new kitchen units and the fitting of the new kitchen in the property. They do not seek to recover the cost of the kitchen white goods. An invoice is produced for the cost of the supply of the new kitchen units in the sum of £3,300. The total value of the invoice for the fitting of both the new kitchen and bathroom is in the sum of £2,700. This also includes the supply and fit of new internal doors, and the filling and painting of all damaged walls.
39. The photographs produced of the bathroom show one particular area of damage which adjoins the sink and bath areas. The area would attract a considerable residue of water on an ongoing basis. No remedial repairs were carried out during the duration of the tenancy. The damage to the bathroom is not significant and relates to a small area of tiling and wooden boxing. The applicants also spoke of the fact that the WC had been disconnected which is accepted though there is no photographic evidence of this. The applicants seek to recover the cost of the fitting of the new bathroom now installed, though have made no claim in respect of the bathroom suite itself.
40. Some remedial work would have been required to be carried out to the tiling and joinery area which adjoins the sink and bath areas, and the WC would have required reconnecting. The damage would not justify the replacement of the bathroom in its entirety. The damage does fall out with what would be deemed reasonable wear and tear. Whilst the applicants have not sought to reclaim for the cost of the bathroom suite, a substantial sum is sought for the refitting of the bathroom. This is not justified. The Tribunal assess that the cost of repairing the damage to the bathroom as at the time that the respondent and her husband left, would be £200.
41. Other than the removal of the flooring in the kitchen there is not much damage evidenced. The applicants did not refer to substantial damage in the kitchen area. As a matter of choice the kitchen was refitted. It is accepted with regards to the photographic evidence that some handles were missing from some units. The kitchen was serviceable. Replacement and repair of the restricted items by a qualified joiner would be a reasonable way of the applicants minimising their losses, and accordingly the Tribunal assesses that the sum of £100 is reasonable to meet these costs.
42. The Tribunal was satisfied that the internal doors of the property were damaged substantially thus justifying their replacement. This is with the exception of the living room door which the applicants accepted was not

damaged and not replaced. To supply and fit five internal doors is reasonably estimated by the Tribunal at £200.

43. The Tribunal was satisfied that additional damage beyond normal wear and tear has been evidenced to a number of walls in the property. The walls were not damaged irreparably to the extent that they required to be removed and rebuilt. The damage evidenced would require simple refilling, in addition to normal redecoration. This is not specialised work. The applicants accepted that after a 6 year lease redecoration would be required in any event. The Tribunal assesses that the additional cost to repair the damage in the walls evidenced would be assessed at £100.
44. The total additional costs assessed by the Tribunal which the applicants have incurred due to the acts and omissions of the respondent therefore comprise of the following:-
- £800 : Removal of rubbish
  - £300 : Contribution to replacement floor coverings
  - £200 : Repairs to bathroom
  - £100 : Repairs to kitchen
  - £200 : Replacement of internal doors
  - £100 : Costs of additional repairs and redecoration to walls

The total additional costs incurred by the applicants therefore totals £1,700.

45. The applicants are entitled to recover the sum of £1,700 in addition to the arrears of rent in the sum of £7,320. The total which the applicants are entitled to recover is therefore £10,020.

### Interest

46. In the application the applicants also seek interest at the rate of 8% per annum from the date of citation until payment. Fair notice of such element of the applicants' claim has been given. Such a request is equivalent to a crave for judicial interest which has no application to the First-tier Tribunal. The Administration of Justice (Scotland) Act 1972, Section 4 as amended by the Act of Sederunt (Interest in Sheriff Court Decrees and Extracts) 1993 covers the payment of judicial interest in the Sheriff Court and these provisions have not been extended to the Tribunal. The payment of a judicial rate of 8% is no statutory basis for the Tribunal. A rate more in line with the real use value of the money and the loss actually suffered by the applicants corresponding to the investment/borrowing rate which would be the real loss suffered by the applicants can be justified. The current rate borrowing rate for short-term

commercial loans is approximately 3% per annum and that is the appropriate rate of interest to be imposed by the Tribunal.

### **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.**

Richard Mill

**28 October 2020**

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**Legal Member: Richard Mill**

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**Date**