



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/21/0471**

**Re: Property at 2 Chamfron Gardens, Stirling, FK7 7XU (“the Property”)**

**Parties:**

**Mr Archie Cowan, Apartment 519 Marsa Gardens, The Wave, Al Mouj, Muscat, Oman (“the Applicant”)**

**Mr David Grierson, 2 Chamfron Gardens, Stirling, FK7 7XU (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order in the sum of Three thousand two hundred and twelve pounds and fifty pence (£3212.50) Sterling with interest at the rate of 4% per annum from the date of decision until payment**

1 By application dated 26 February 2021, the Applicant sought an order for payment of rent arrears in the sum of £1650 against the Respondent. In support of the application the Applicant provided:-

- (i) Tenancy Agreement between the parties dated 31 January 2020;
- (ii) Order for Payment issued by the First-tier Tribunal for Scotland dated 16 December 2020 in favour of the Applicant against the Respondent in the sum of £7,425.00 with interest at the rate of 4% per annum from the date of decision until payment; and
- (iii) Email correspondence between the Applicant and the Respondent.

- 2 By Notice of Acceptance of Application the Legal Member of the Tribunal, with delegated powers from the Chamber President, determined that there were no grounds to reject the application. A Case Management Discussion was therefore assigned for 27 April 2021, to take place by teleconference due to the ongoing restrictions arising from the Covid-19 pandemic.
- 3 Sheriff Officers attempted to serve the application paperwork on the Respondent on 25<sup>th</sup> March 2021 but noted the property was unoccupied. The Case Management Discussion was therefore postponed to the 26<sup>th</sup> May 2021.
- 4 Service of the application paperwork was thereafter served by advertisement on the Tribunal website.
- 5 On 6 April 2021 the Tribunal received an email from Mrs Linda Leung in the following terms:-

*“Mr Grierson has for the third time been hospitalized due to bilateral pneumonia and is currently too ill to be involved in another case management meeting. Mr Grierson is also currently homeless so therefore cannot partake in a case management meeting. Mr Cowan has performed an illegal eviction while an eviction ban is in place. Police Scotland are informed. I have no choice but to request an adjournment until Mr Grierson is fit enough and he is housed. He does not have anyone to represent him at the time of April 27<sup>th</sup>.”*

- 6 The Tribunal responded to advise Mrs Leung that she was not a named party to the case and as such a request for postponement could not be made by her on the Respondent's behalf. Mrs Leung responded by email dated 8 April 2021 to advise that *“Mr Grierson is in hospital with bilateral pneumonia. He is not fit to do a case management meeting. I am emailing on his behalf as he cannot email himself from a hospital bed. So either the meeting goes ahead without him or it gets adjourned. Mr Grierson is homeless due to Archibald Cowan performing an illegal eviction.”* The Tribunal responded to Mrs Leung to confirm that the Case Management Discussion had in fact been postponed to the 26<sup>th</sup> May 2021 and that the Respondent could arrange for a representative to attend if he was unable to do so. Mrs Leung responded by email dated 13 April 2021 in the following terms:

*“Unfortunately I cannot estimate or give a prognosis on Mr Grierson's health on 26<sup>th</sup> May 2021 regarding him attending the meeting himself or having a representative. All I can say is Mr Grierson was illegal evicted while a government eviction ban is in place and suffering pneumonia at the same time so this meeting should not even be going ahead as the law has been broken.”*

- 7 On 24 May 2021 the Applicant submitted the following documentation:-

- (i) Revised Form F Application Form;
- (ii) Recent email correspondence between the Applicant and Respondent;
- (iii) Photos detailing damage to the oven, fridge and items in the garage;
- (iv) Photos detailing neglect to items in the house; and
- (v) Photos showing an open tin of tuna in the kitchen.

The Applicant advised that he was seeking increased rent arrears in the sum of £2172.50. In addition the Applicant was seeking to introduce additional costs following recovery of the tenancy. In particular the Applicant had incurred the sum of £120 in respect of lock changes due to the Respondent's failure to return the keys for the property. The Applicant had also incurred costs in respect of damage caused to the integrated double oven and fridge in the kitchen, removal of items left in the garage, deep internal cleaning due, in part, to the Respondent having left open cans of food in the kitchen, and cleaning of external windows. These were costs due by the Respondent under the terms of the tenancy agreement.

- 8 On 25 May 2021, the Tribunal received a further email from an anonymous source purporting to be on behalf of the Respondent in the following terms:-

*"This is being sent on Mr David Grierson's behalf. He will not be attending the above meeting. He wishes you to adjourn the meeting or carry on in his absence and he will recall it at a later date. Mr Grierson is homeless, in and out of hospital and had no phone or wifi due to Archibald Cowan. Mr Grierson believes the illegal eviction is an attempt on his life and will be speaking with police when he has recovered from his latest hospital admission."*

- 9 On 26<sup>th</sup> May 2021, an email was received from the Respondent, following notification to him of the Applicant's representations of 24<sup>th</sup> May 2021 in the following terms:-

*"Hilarious. If you contact Stirling council they will tell you about the power cut around February 8th which was the reason the food in the freezer went off. Please note Mr Cowans overuse of the word malicious. Any damage to his property was already there before I moved in and I have photos and a video of this which I will provide. Mr Mark McDowell former tenant of Mr Cowan said Mr Cowan is a serial offender and accused all his tenants of damage. Please contact Mr Colin Martin electrician whom Mr Cowan is in debt to and he will explain all the damage to his property before I even moved in. As of the malicious tin of tuna well the policemen could not stop laughing when I told them. In fact he said there was a uproar of laughter at the station. If your legal member favours this man then I have no faith in the fairness of this service and will take it to the press."*

## The Case Management Discussions

- 10 The first Case Management Discussion took place on 26 May 2021. The Applicant was initially present at 9.50am but was unable to maintain his connection to the conference call due to technical difficulties and was not present when the Case Management Discussion commenced at 10am. As a consequence, neither party was present at the hearing.
- 11 The Respondent's request for adjournment had been noted by the Legal Member. It was also noted that the Applicant had submitted an email on 24th May 2021 with a rent statement confirming an updated arrears figure of £2172.50 together with a list of costs in respect of lock changes and remedial works. The introduction of the costs for damages would constitute new issues in respect of the subject matter of the application and would therefore require to be intimated to the Respondent at least fourteen days prior to the Case Management Discussion to give the Respondent the opportunity to respond, all in terms of Rule 14 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017.
- 12 On that basis the Legal Member determined that the appropriate way forward would be to adjourn the Case Management Discussion to a date to be assigned. The Applicant's email of 24<sup>th</sup> May 2021 was accepted as a formal request to amend the application to introduce the revised rent arrears figures and the costs for lock changes and remedial works. The Respondent was invited to make any further written representations in response to the request for amendment no later than 10<sup>th</sup> June 2021.
- 13 By email dated 10<sup>th</sup> June 2021 the Tribunal received a further request for postponement of the Case Management Discussion from the Respondent in the following terms:-

*"I wish to request a postponement of the meeting. I was illegally evicted by the applicant. I have had bilateral pneumonia twice and bronchial pneumonia twice and I have been hospitalized on every occasion. I am homeless. I am a pensioner. I am ill. I have no phone. It is not possible for me to attend this meeting. This man was given £3000 in cash which he did not acknowledge (sic). He has made many attempts on my life by harassing me and humiliating me. You are not a fair service because my video was never heard. I will not be attending this meeting so please postpone it until I am in a better position for this meeting to be a fair one."*
- 14 By email dated 16<sup>th</sup> June 2021 the Applicant advised the Tribunal that he opposed the request for postponement. He produced three decisions by the First-tier Tribunal for Scotland Housing and Property Chamber involving the parties under references FTS/HPC/EV/20/2007, FTS/HPC/CV/20/1481 and FTS/HPC/PR/21/0770 and two decisions by the Upper Tribunal for Scotland.

Applications FTS/HPC/CV/20/1481 and FTS/HPC/CV/20/2007 consisted respectively of an application by the Applicant for payment of outstanding rent arrears in the sum of £7425 and an order for repossession, both arising from the tenancy which is the subject of the current application. Both orders were granted by the Tribunal. The Respondent had appealed the orders granted by the First-tier Tribunal to the Upper Tribunal and both appeals were dismissed. Application PR/21/0770 consisted of an application by the Respondent against the Applicant for damages for unlawful eviction which was rejected by the Tribunal.

15 By email dated 16<sup>th</sup> June 2021 the Tribunal refused the request for postponement. Having regard to the history of the application, and that of the previous proceedings before the Tribunal, the Tribunal concluded that it could reasonably assume the postponement request was an attempt to delay proceedings without just cause. It was noted that the Case Management Discussion was scheduled to take place by tele-conference, therefore all the Respondent required to participate was a phone, and on the basis that he had been in regular email correspondence with the Tribunal it could be reasonably assumed that he had access to such a device. It was also highlighted again to the Respondent that he could arrange for a representative to attend the Case Management Discussion if he was unable to do so.

16 On 6 July 2021, the Tribunal received an email from Mrs Linda Leung in the following terms:-

*“Mr Grierson's brother in USA has died suddenly and unexpectedly. Mr Grierson is understandably grieving and will be returning to USA accompanied by myself and my husband for support therefore will not be attending the above case management meeting. A report to Police Scotland regarding the illegal eviction of Mr Grierson prior to his departure to USA will be made. Mr Grierson will return to UK in due course.”*

17 On 7 July 2021, the Applicant responded, objecting to the request for postponement and asking the Tribunal to make a Direction requiring the Respondent provide proof of his UK visa status, confirmation of current address in the UK, copy of flight tickets from UK to USA, confirmation of the airport he would be departing from and a copy of his brother's death certificate. The Applicant also highlighted that the Respondent had previously stated he was unable to attend the Case Management Discussion due to severe illness, but was now able to fly to the USA.

18 On 9 July 2021, the Tribunal received an email from Mrs Linda Leung in the following terms:-

*“First of all I am not named in this hearing so I have absolutely no reason to attend. I am simply supporting a disabled man. I am disgusted at the applicant for suggesting that Mr Grierson would say his brother has died in order to avoid a civil meeting about rent arrears. Please see attached details of the sudden and*

*unexpected death of Mr Gary Grierson ,Levy County Florida Police Department. Case file number 202107002687. Speak with Detective Barrea at tel USA 352 4865111. Mr Grierson has returned to UK on May 23rd 2021 and proof of this was sent to the applicant weeks ago. UK border control will confirm this. Mr Grierson is being assisted by myself and my husband to UK. He has medication and oxygen arranged for the business class flight to endure his comfort.”*

Mrs Leung subsequently confirmed in a follow up email that she and her husband would be accompanying the Respondent to the USA.

- 19 On 11 July 2021, the Tribunal received an email from the Respondent in the following terms:-

*“Please see attached details of my brothers death and please see attached my Visa and immigration covid package which is needed to enter UK. Also please see my hospital paperwork when I attended accident and emergency in a london hospital 3 days after arriving in UK. Mr Cowan is the perpetrator here. He is the liar. It is here in black and white. I will not be attending this meeting as I will be in USA with my carers attending my brothers funeral. I suggest you adjourn this meeting or cancel it completely I am not a criminal and I am allowed in uk whenever I choose. The applicant is not the law he thinks he is.”*

The Respondent provided what appeared to be a screenshot with a file number and contact number for Detective Barrea at Levy County Sheriffs Office together with what he claimed to be proof of his Visa immigration and Covid package and hospital paperwork proving he was in the UK.

- 20 On 11 July 2021 the Tribunal received an email from the Applicant challenging the position put forward by the Respondent on the basis that he had previously given his brothers details as a James Grierson in North Carolina, he had a number of debts which would call into question his ability to afford a business class flight and there were ongoing restrictions on travel between the UK and USA which called into question Mrs Leung’s ability to travel.
- 21 On 12 July 2021, Mrs Leung emailed the Tribunal stating that she and her husband were currently on route to the USA with the Respondent, as carers and family members to an honourable serviceman which gave them entitlement to enter the USA. She explained that the Respondent had four brothers, one of whom was dead and he had paid with his business class flights with his American Express card, which the Applicant had refused to accept. She stated she would have no further involvement, that the Respondent would not be at the meeting and there would be no representative present.
- 22 On 13 July 2021 at 7.56am, shortly prior to the Case Management Discussion, the Respondent emailed the Tribunal in the following terms:-

*"I wish to report this sick twisted individual, the applicant Mr Archibald Cowan to the legal member on this case. Firstly it is possible to have more than one brother. Secondly my brother Mr Gary Grierson, honorable serviceman died suddenly and unexpectedly on July 2nd 2020. I gave my permission to Mrs Leung to give details to the respondent of the incident number and the telephone number and name of the officer dealing with my brothers death. How dare the applicant suggest this is false! I am flying to USA with Mr & Mrs Leung whi (sic) are my carers to attend my brothers funeral and estate. As known I have in the past been very ill and homeless. I have since recovered to the standard where I can fly as long as I'm not in economy class. How I pay for business class flights is none of anyones business. I do not have a representative at this time and I most certainly am not going to put my family business on hold for the sake of a civil meeting which can be changed. I will return to UK in approximately 6 weeks. Mr Alan Strain legal member has been reported for accepting the applicants ridiculous accusations and not allowing me to produce my evidence."*

- 23 The second Case Management Discussion took place on 13<sup>th</sup> July 2021. The Legal Member noted the statement from the Respondent to the effect that he would not be present at the Case Management Discussion and did not have a representative. The Legal Member concluded that he had received proper notification in terms of Rule 14 of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017 and therefore determined to proceed in his absence.
- 24 As a preliminary matter, the Legal Member allowed amendment of the application to increase the rent arrears sought to £2172.50 and amend the claim to include the costs of changing locks in the sum of £120 and the costs of repairing damages and cleaning following the Respondent's removal from the property, which were costs due under the terms of the tenancy agreement between the parties.
- 25 The Legal Member then heard from the Applicant on the various aspects of the claim as set out in his written representations. Mr Cowan explained that attempts had been made to enter into payment agreements with the Respondent and he had been willing to write off an element of the debt if payment was forthcoming. However, these had been met with abuse. He referred to the evidence of damage to the property which had been submitted on 24 May 2021 and explained that there had been additional costs which he had not sought to recover. He felt he had been entirely reasonable. Mr Cowan noted that the Respondent claimed that the fridge was damaged at the start of the tenancy, however he disputed that was the case. He referred to certificates lodged which confirmed the appliance was in good working order. The Applicant expressed his frustration with the Respondent's conduct and his wish to draw a line under this unfortunate situation.

## Findings in Fact

- 26 The Applicant and Respondent entered into a Tenancy Agreement for the property at 2 Chamfron Gardens, Stirling, FK7 7XU dated 31 January 2020.
- 27 In terms of Clause 8 of the said Tenancy Agreement the Respondent undertook to make payment of rent at the rate of £825 per month.
- 28 The Respondent failed to make payment of rent lawfully due for the period 31 December 2020 to 19<sup>th</sup> March 2021. The rent arrears accrued over that period are £2172.50
- 29 In terms of Clause 50 of the said Tenancy Agreement the Respondent undertook to take reasonable care of the property, its fixtures and fittings and not to deliberately damage or alter same.
- 30 The Respondent wilfully or negligently caused damage to the integrated double oven and fridge within the property. As a result the Applicant incurred costs repairing said items in the sum of £595.
- 31 In terms of Clauses 68 and 69 of the said Tenancy Agreement the Respondent undertook at the end of the tenancy to clean to (or pay for the cleaning to) a good standard the premises and its fixtures and fittings and to remove refuse and rubbish from within the premises.
- 32 The Respondent failed to clean the property to a good standard at the end of the tenancy. As a result the Applicant incurred costs in respect of cleaning the property in the sum of £175.
- 33 In terms of Clause 71 of the said Tenancy Agreement the Respondent undertook to return all keys to the premises to the Applicant or his agent on the last day of the tenancy.
- 34 The Respondent failed to return the keys for the property. As a result, the Applicant incurred costs in respect of lock changes in the sum of £120.
- 35 The Respondent is therefore liable to pay to the Applicant the sum of £3212.50 all in terms of the said Tenancy Agreement between the parties.
- 36 Despite repeated requests the Respondent has refused or delayed to make payment of the sum due.



## Reasons for Decision

- 37 The Tribunal was satisfied that it could make a determination of the application at the second Case Management Discussion and that to do so would not be detrimental to the parties. Whilst the Tribunal had received a request for postponement from the Respondent, ultimately the Tribunal had concerns regarding the credibility of the reasons he had put forward for this and the erratic nature of his various requests. The Tribunal agreed with the conclusion reached by fellow Members of the Housing Property Chamber in the decisions on applications FTS/HPC/CV/20/1481 and FTS/HPC/EV/20/2007, namely that the Respondent was using unfounded claims regarding his medical conditions to prevaricate and obfuscate, without just cause, and latterly had sought to rely upon the death of a family member. Whilst the Tribunal would ordinarily have had great sympathy with the Respondent in such circumstances, his conduct and the credibility of some of the detail around his travel arrangements did cast some doubt over whether this was in fact a true account of events. The Tribunal found it particularly difficult to marry the Respondent's repeated statement that he was homeless with his ability to afford a business class flight to the USA.
- 38 The Tribunal was also cognisant that it had agreed a postponement of the first Case Management Discussion and had given the Respondent the opportunity to arrange a representative if he were unable to attend the adjourned date. His reasons for not doing so were not clear and the Tribunal could not understand why Mrs Leung, who had clearly held herself out as his representative in her email correspondence with the Tribunal whilst denying acting as such, could not perform this function. The Respondent's refusal to avail himself of the opportunity to have representation appeared to the Tribunal to be another attempt on his part to delay the proceedings unnecessarily.
- 39 The Tribunal also noted that both the Respondent and Mrs Leung were able to send multiple emails to the Tribunal, with one having been received shortly before the Case Management Discussion. The Tribunal could therefore reasonably assume that both would have had access to a phone, which was all that would be required in order to join the Case Management Discussion. The Tribunal therefore concluded that it would not be in the interests of justice to allow a further postponement of the Case Management Discussion.
- 40 In contrast, the Tribunal found the Applicant credible and consistent in his account of events, both in his written representations and his verbal submissions at the Case Management Discussion. The Tribunal therefore accepted and preferred the position put forward by the Applicant and, based on its findings in fact, was satisfied that the Respondent was liable to pay the sum of £3212.50. There was nothing credible before the Tribunal to contradict that position and therefore from making the order sought by the Applicant. The Tribunal further determined to include interest on the sum awarded at the rate of 4% per annum, being an approximation of the current borrowing rate for short-term commercial loans.

41 The Tribunal therefore made an order for payment against the Respondent.

### **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.**

**R. O'H**

**13<sup>th</sup> July 2021**

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**Legal Member/Chair**

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**Date**