



**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/EV/21/1101**

**Re: Property at 78 Ness Drive, Arbroath, Angus, DD11 5EW (“the Property”)**

**Parties:**

**Mrs Denise McGurk, 2 Morley Place, Arbroath, Angus, DD11 2AJ (“the Applicant”)**

**Miss Tracey McCulloch, 145 High Street, Arbroath, Angus, DD11 1DR (“the Respondent”)**

**Tribunal Members:**

**Nicola Irvine (Legal Member) and Gordon Laurie (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an order for payment against the Respondent in favour of the Applicant in the sum of £5,265**

**Background**

- [1] The Applicant made an application to the Tribunal dated 2 May 2021 seeking an order for payment in terms of the Housing (Scotland) Act 2014 (“the 2014 Act”) and Rule 65 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules and Procedure) Regulations 2017 (“the 2017 Rules”).
- [2] This dispute previously came before the Tribunal on 20 September 2021 and 1 November 2021 at Case Management Discussions (“CMDs”), following which Notes summarising the CMDs were issued to parties, setting out what matters were agreed and what issues were to be determined at a Hearing.

The Tribunal issued a Note of Directions to parties on 1 November 2021 requiring the parties to lodge any documentation upon which they intended to rely no later than 23 November 2021. The Applicant lodged 2 further submissions by email on 22 November 2021. Nothing was lodged by or on behalf of the Respondent.

- [3] A Hearing was assigned for 7 December 2021 and took place by conference call. Initially only the Applicant took part in the Hearing, but the Respondent joined the Hearing approximately 50 minutes late.

### **The Hearing**

- [4] The Applicant advised that she intended to give evidence in support of her application and she was supported by her daughter, Mrs Caird.
- [5] Prior to hearing any evidence, the Tribunal reminded the Applicant of the issues to be resolved, namely:-
- i. Did the Respondent pay a deposit of £500 along with one month's rent in advance of the commencement of the tenancy?
  - ii. What is the true level of rent arrears due by the Respondent?
  - iii. Was there an agreement to reduce any rent arrears on the basis that the Respondent carried out work for the Applicant and if so, what the terms of that agreement?
  - iv. Was rent increased from £500 per month to £550 per month from March 2020?
  - v. Was there any agreement to backdate a reduction of rent back to £500 per month?
  - vi. Was the level of rent arrears to be reduced because the Respondent paid for blinds for the property and if so, by what sum was the level of rent arrears to be reduced by?
- [6] When the Respondent joined the Hearing, the Tribunal reminded her of the issues to be resolved. Evidence was led from the Applicant and the Respondent. A summary of their evidence is contained below.

## Summary of evidence

### Mrs Denise McGurk

- [7] Mrs McGurk resides at 2 Morley Place, Arbroath, Angus. She owns the property at 78 Ness Drive, Arbroath, Angus, and the Respondent was one of her tenants. The Respondent viewed the property on 2 July 2016 and the tenancy started on 10 July 2016.
- [8] On 5 July 2016, the parties exchanged messages by text in relation to the decoration of the property. The Respondent sent a message saying “Can I get wooden blinds installed and I would be leaving them if I did move which I can’t see happening.” Thereafter the parties discussed matters by video call and the Applicant agreed that that was in order. Prior to this, the property had vertical blinds, which the Respondent arranged to have removed and she replaced them with wooden blinds.
- [9] The property needed to be cleaned and decorated and the Respondent wanted to decorate it to her taste. The Respondent was given the keys on 12 July 2016 and no rent was due until 10 August 2016. Payment of £500 rent was not paid by 10 August. The Applicant sent a message to the Respondent on 15 August 2016 advising that rent had not been received. The parties exchanged messages that day and the Applicant received payment of the monthly rent of £500 that day. The Respondent always paid rent by bank transfer and never paid rent in cash.
- [10] Despite what the tenancy agreement says, the Respondent did not pay a deposit. In response to a question from the Tribunal, the Applicant advised that there was “definitely no deposit” from the Respondent. She has never taken a deposit from any of her tenants. The Applicant rents out 5 properties and none of the tenants have paid a deposit. The Applicant has used the same style of tenancy agreements for all of her tenants and despite the reference to as deposit being due, it was not paid by the Respondent.
- [11] The total rent arrears due by the Respondent is £5,815. The following is a list of the payments of rent due by the Respondent but not paid:-
- £500                      September 2016
  - £500                      October 2016

- £500            December 2017
- £500            May 2019
- £550            March 2020
- £550            April 2020
- £550            July 2020
- £275            August 2020
- £150            October 2020
- £550            November 2020
- £550            December 2020
- £70             January 2021
- £295            February 2021
- £275            March 2021

The Applicant referred the Tribunal to excerpts from her bank statements which had been lodged and highlighted the gaps in payments from the Respondent.

- [12] In December 2019 the parties spoke by telephone and the Applicant advised the Respondent that she intended to increase the monthly rent from £500 to £550 with effect from March 2020. The Respondent agreed to that increase in rent. The Applicant changed the rental sum on the tenancy agreement to reflect the increase in rent and sent a copy to the Respondent.
- [13] The Respondent found the lockdown measures (arising from the Coronavirus pandemic) difficult to cope with. The Applicant offered the Respondent work; the work involved redecoration of a public house owned by the Applicant. The Applicant offered payment at the rate of £10 per hour on the basis that the sum earned by the Respondent was to be deducted from the rent arrears due by her. The Respondent started work on 19 May 2020 and finished in June 2020. The Applicant noted the Respondent to have worked 34 hours, but she agreed to deduct one month's rent in lieu of the work done by the Respondent. That sum is still to be deducted from the sum owed by the Respondent.
- [14] In January 2021, the Respondent contacted the Applicant by telephone and was very upset, advising the Applicant that she could no longer afford to stay in the property. She advised the Applicant that she did not want to leave but could not afford to live there. The Applicant offered to reduce the monthly

rental charge to £400 if she wished to stay in the property. The Respondent declined that offer, advising that she had somewhere else to go where she did not have to pay rent. It was agreed between the parties that the Respondent was to remove from the property on 15 March 2021, which she did.

- [15] There was no agreement between the parties that the rent arrears would be reduced, other than the deduction of one month's rent charge in lieu of work carried out by the Respondent in the Applicant's public house.

#### Tracey McCulloch

- [16] Miss McCulloch resides at 145 High Street, Arbroath, Angus. She formerly resided at the property address. She received a cash payment of £1,000 from her former partner and paid this to the Applicant; £500 of this was in respect of the deposit due and £500 was in respect of the first month's rent. She drove to the Applicant's house and paid this sum in cash before she received the keys to the property and estimates that this was on 7 June 2016. She first viewed the property shortly before this and recalled that the Applicant had just returned from holiday. The Respondent signed the lease on 16 June 2016. In relation to the copy lease lodged with the present application, the Respondent has never seen the lease before. The first payment of rent due was in August 2016. The Respondent has given her copy of the lease and other documentary productions to her solicitor. She cannot explain why these documents have not been lodged with the Tribunal.
- [17] In December 2019, the Applicant telephoned the Respondent and arranged to visit the Respondent at the property. When she arrived, she told the Respondent that she intended to increase the monthly rent from £500 to £550 with effect from March 2020. The Applicant provided her with a new tenancy agreement which had the original rental charge "tippexed" out and the new rental charge of £550 per month was handwritten. The Respondent accepted that rent increase.
- [18] The list produced by the Applicant detailing the rental payments not made by the Respondent is accurate. However, the sum due should be reduced to reflect the work carried out by the Respondent and work carried out by her in relation to the property. Miss McCulloch explained that when the

lockdown measures were introduced in 2020, she was unable to work as a result of the restrictions. She applied for universal credit and required to produce a copy of her tenancy agreement. She was told by those assessing her application that the tenancy agreement was not valid because the rental payment due had been “tippexed” and that was not acceptable. The Respondent’s application for universal credit was refused and she did not receive any financial assistance.

- [19] After the universal credit claim was refused, the Applicant offered her work in a public house she owned, so that the Respondent could “work off” the rent arrears which had accrued. The work was to redecorate the large public house and the Applicant changed her mind about the paint colour after the work had started, so it took a long time to complete. The Respondent started work in May 2020 and finished in July 2020. The Applicant did not tell the Respondent how much was to be deducted from the rent arrears which had accrued and did not tell the Respondent what the hourly rate of pay was. In response to a question from the Tribunal, the Respondent advised that she did not ask about the rate of pay because she was in a panic about the lack of financial assistance she received. She was hopeful of clearing the rent arrears due at that time. She thought that when she finished work in July, the rent arrears due had been cleared. At the conclusion of the work, the Applicant thanked her and said “that’s us clear now.”
- [20] In August 2020, the Respondent asked the Applicant to have flooring in the property replaced. The Respondent installed new flooring and a new hall carpet. She was in contact with the Applicant about that and the Applicant was happy that the Respondent was taking the hassle of organising and paying for that. The Applicant told her that if she organised the work, the Applicant would “sort it out for her”. The Respondent paid £257 to have the flooring replaced. She did not expect to be charged rent for the month of August 2020 as a result of that.
- [21] She gave notice to the Applicant on 17 February 2021 that she intended to leave the property. The Applicant visited her and told her that she would backdate a rent reduction of £50 to March 2020. The Applicant offered to reduce the monthly rent to £450 if the Respondent wanted to remain in the property. The Respondent was depressed and could not see a way in which

she could afford to stay in the property and ultimately she left the property on 15 March 2021.

- [22] When she moved into the property, there were no blinds on the windows. When she left the property, she offered the blinds to the incoming tenant (Cheryl) for £300. The incoming tenant agreed to pay that sum for the blinds. Thereafter, the Applicant made contact with the Respondent and advised that she had given the blinds to the new tenant and that the Applicant would deduct £300 from the rent arrears due.
- [23] After she moved out of the property, she consulted Citizen's Advice Bureau because there was no longer an amicable relationship between the parties. The Respondent had offered to pay to the Applicant the rent arrears at the rate of £15 per week until she was back in employment. That was not acceptable to the Applicant. The advice from the Citizen's Advice Bureau was to ask for a breakdown of the hours she had worked in the public house and a breakdown of rent arrears. They also gave advice about the obligation on the Applicant to lodge her deposit with a secured scheme. In response to a question from the Tribunal, the Respondent advised that Whelan & Co continue to represent her and in fact, she had spoken to them by telephone this morning.
- [24] In cross examination, it was put to the Respondent that the property was only listed for rental on 22 June 2016 and that the property could not have been let before July. The Applicant suggested to the Respondent that the tenancy could not have commenced before July 2016 because the Applicant did not return from holiday until July. The Respondent did not accept that. It was suggested to the Respondent that she finished work in the public house on 8 June 2020 and that she returned to work on 12 June 2020. The Respondent did not accept that and maintained that she completed the work in July 2020. The Respondent accepted that she wanted the flooring replaced in the property on the basis that the flooring needed to be renewed.
- [25] Following the Hearing, the Respondent made contact with the Tribunal by email and advised that she had been given the wrong passcode for the conference call and was therefore late in joining the Hearing. The Tribunal

noted that the correct passcode was sent by email on 5 November 2021 to the Respondent's representative, Whelan & Co.

### **Findings in fact**

[26] The Tribunal had regard to all of the written representations, documents and the oral evidence given during the hearing, whether referred to in full in this Decision or not, in establishing the facts on the balance of probabilities. The Tribunal found the following facts established:

- (i) The parties entered into a tenancy agreement in respect of the property which commenced July 2016.
- (ii) The rent payable by the Respondent was £500 per month, which increased to £550 per month with effect from March 2020.
- (iii) The Respondent gave notice to terminate the tenancy on 17 February 2021 and the tenancy ended on 15 March 2021.
- (iv) At the conclusion of the tenancy, the Respondent had incurred rent arrears amounting to £5,815.
- (v) After adjustment in respect of the work carried out by the Respondent, the rent arrears outstanding as at the date of the Hearing amount to £5,265.

### **Reason for decision**

[27] There was no dispute that there was a tenancy agreement, although the parties disagreed on the date that the tenancy started. The start date was not material to the application for payment. Notwithstanding that, the Tribunal found that the tenancy commenced in July 2016 rather than June 2016. In her evidence, the Applicant referred to an exchange of text messages with the Respondent on 5 July 2016, which was after the Applicant says she returned from holiday. The copy tenancy agreement lodged states that the date of entry was 10 July 2016. The Respondent indicated that she had a different copy of the tenancy agreement, but that has not been produced and therefore the Tribunal has not had sight of that document.



The evidence of the Respondent was that she expected the first payment of rent to be due in August 2016. In light of all of those adminicles of evidence the Tribunal concluded that the tenancy commenced in July 2016.

- [28] The Tribunal was not satisfied that a deposit of £500 was paid by the Respondent at the outset of the tenancy. The parties' oral evidence about this was polarised. The Respondent indicated that she had given some information to her solicitor about this, but there was no material before the Tribunal relating to the deposit.
- [29] There was no dispute between the parties that the initial rental charge was £500 per month, increasing to £550 per month with effect from March 2020.
- [30] Nor was there any dispute between the parties that the Respondent gave notice to terminate the tenancy and that the tenancy ended on 15 March 2021.
- [31] The Respondent did not dispute that, on the face of it, the rent arrears accrued amounted to £5,815. Her position was that the rent arrears should have been reduced to reflect the work carried out by her and sums spent by her on improving the property. In relation to the work carried out by the Respondent in decorating the Applicant's public house, the Respondent's own evidence was that she was not told how much was to be deducted from the rent arrears. The Respondent agreed to carry out work for the Applicant but did not agree any terms in respect of a rate of payment to be applied to that work and did not ask how much would be deducted from her rent arrears. On that basis, the Tribunal accepted the evidence of the Applicant that the sum of £550 was to be deducted from the rent arrears due. In relation to the wooden blinds fitted by the Respondent, the Applicant read a text exchange which had taken place between the parties about the fitting of blinds and there was nothing to indicate that there was an agreement that the cost of the blinds was to be deducted from the rent arrears. The parties' position in evidence was polarised on this point. The Tribunal was not satisfied on the balance of probabilities that there was any agreement that the cost of the blinds would be deducted from the rent arrears due by the Respondent. The Respondent gave evidence that she had replaced flooring in the property. This had not previously been raised at the case management discussions. In any event, the Tribunal was not satisfied that there was any

agreement that the cost of flooring was to be deducted from the rent arrears due.

### **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.**

**Nicola Irvine**

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**Legal Member/Chair**

**13 December 2021**  
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**Date**