



**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/21/1114

Re: Property at 1 Camus Street, Carnoustie, DD7 7PL (“the Property”)

Parties:

**Mr David McCutcheon, Kirkhill Golf Club, Greenlees Road, Cambuslang, G72
8YN (“the Applicant”)**

Michelle Cattanach, 29B Ballantrae Road, Dundee DD4 8PL (“the Respondent”)

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be decided without a Hearing
and made an Order for Payment by the Respondent to the Applicant of the sum
of £2,073.42.**

Background

1. By application dated 11 May 2021, the Applicant sought an Order for Payment in respect of unpaid rent that had become lawfully due by the Respondent to the Applicant. The sum sought was £2,400.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Applicant, as landlord, and Ms Cattanach and Mr Alistair Knight, as tenants, commencing on 30 April 2020 at a rent of £800 per month, and a Rent Statement showing arrears as at 30 April 2021 of £2,400, the last payment having been received on 26 February 2021 for the period from 30 January to 28 February 2021.

3. A Case Management Discussion was arranged for 28 July 2021, but it was postponed, as sheriff officers were unable to trace Mr King, so could not serve papers on him. The Respondent had confirmed her new address when papers had been served on her. The Tribunal decided to fix a new date for a Case Management Discussion and that service on Mr King would be effected by advertisement on the Tribunal's website.
4. On 30 June 2021, the Respondent submitted written representations to the Tribunal. She said that she had been fighting with the Applicant's letting agents ("the letting agents") to have repairs done since the day she moved in to the Property. As a last resort, she had stopped paying rent. She provided the Tribunal with copies of very extensive email correspondence between the Parties dated between 19 February 2021 and 25 May 2021.
5. The chain of emails began with one in which the letting agents advised the Respondent that he had put the Property up for sale. In response, on 22 February, the Respondent asked if this meant that none of the repair jobs that needed to be done would now be done. Later that day, the letting agents asked the Respondent to list and provide photographs of the issues and the Respondent replied that the front door had a huge gap at the bottom, with a mushroom growing there, the shower head was still hanging off, the bathroom heater had never worked, the boiler kept losing pressure, there was a draught from the windows and a smell of damp in the downstairs bedroom with the bathroom in it. The following day, the letting agents told the Respondent that they had asked a handyman to fit a draught excluder to the front door, repair the shower head and look at the towel rail in the bathroom.
6. On 1 March, the letting agents told the Respondent that they had had a call from the local authority about a list of repairs that the Respondent had told them were outstanding. The letting agents said that they were under the impression that the handyman had seen to these issues on the previous Friday, and they asked the Respondent if there were more repairs that had not been reported. The Respondent confirmed that work had been done, including what she understood to be a short-term fixing of the shower head. A draught excluder had been fitted, but the handyman had said nothing about the boiler and there was still a smell of damp in the downstairs bedroom with the bathroom. On 4 March, the letting agents told the Respondent that their handyman had reported that there was no evidence of damp or a leak in the en-suite and asked if she was ventilating the room properly. They also confirmed to her that the plumber had re-balanced the boiler which fixed the towel rail in the bathroom and had not noted any issues with the boiler.
7. On 26 March 2021, the Respondent again listed the problems. She said that the person sent by the letting agents had told her he would fit a draught excluder but would notify the letting agents that the gap was too big for it to work. He had siliconed the shower head back on but had told her that it would fall off again in the next six months. He said that he would also tell the letting agents about window draughts and that the living room windows had either not been fitted or sealed properly, causing draughts and condensation between the panes. On the same day, the letting agents told the Respondent that a job had been raised for the contractor to look at the issues regarding the windows.

8. On 4 May 2021, the Respondent emailed the letting agents to say she was withholding her rent until the windows and front door were fixed properly. On 19 May, they told the Respondent that the landlord had confirmed that he would replace the lounge bay windows but was unable to pay the 50% deposit required until she paid her rent arrears. The Respondent then gave notice of her intention to leave the Property, the notice expiring on 16 June. She contended that the rent was only two months in arrears.
9. On 25 May 2021, the letting agents confirmed the moving out date as 16 June and told the Respondent that the contractor who was supposed to have fixed the draught at the front door had been unable to do so, as the Respondent had not been in at the arranged time and had not answered his calls.
10. In addition to the copy emails, the Respondent provided the Tribunal with a copy of a Private Residential Tenancy Agreement, signed by her on 14 August 2020, in which she was named sole tenant, and a letter from NHS Tayside of 27 May 2021, in which a Health Visitor stated her view that the Property was unsuitable for the Respondent and her family, partly due to downstairs windows not opening, a large draughty gap under the front door, the shower not working, the boiler constantly needing re-pressurised, and damp within one of the children's bedrooms downstairs. The Respondent said in her representations that her ex-partner had been trying to get the letting agents to fix things and she had continued doing this after he left in July 2020, but to no avail. As a last resort, she had stopped paying rent. She contended that the arrears were two months, not three months.

Case Management Discussion

11. A Case Management Discussion was held by means of a telephone conference call on the afternoon of 23 August 2021. The Applicant was represented by Miss Hazel Young, Property Manager of Rockford Properties, Dundee, the letting agents. The Respondent was not present or represented. The Applicant's representative provided an updated Rent Statement to the end of the tenancy and told the Tribunal that the arrears, calculated to 16 June 2021 and taking into account a payment of £800 made by the Respondent at the end of May, had now reduced to £2,073.42. She asked that the sum sought be reduced accordingly. She also advised the Tribunal that Mr Alistair King should be removed as a Respondent, as he had vacated the Property before there were any rent arrears. Miss Young also told the Tribunal that the letting agents' contractors, on behalf of the Applicant, had been trying to get into the Property, but the Respondent had not been there when they turned up at pre-arranged times.

Reasons for Decision

12. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2027 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a

Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

13. The Tribunal noted carefully all the representations made by the Respondent regarding the condition of the Property. She had not provided copies of any correspondence prior to 19 February 2021, so the Tribunal had no evidence as to when she had first raised issues with the letting agents, what these issues had been at the time and whether the Applicant had taken any steps to investigate and, if necessary, to instruct any remedial works. The Tribunal was also mindful of the fact that, even if it accepted the Respondent's statement that she had had issues from day one of the tenancy, it had begun during the COVID-19 lockdown and it would not have been possible for contractors to attend the Property for many months. The Tribunal could only have regard to the evidence before it and was satisfied from the email correspondence between the Respondent and the letting agents that, between February and May 2021, the letting agents had attempted to engage with the Respondent to have any issues resolved. The front door had had a draught excluder fitted, although the Respondent did not think it would work, the Applicant had agreed to replace the living room bay window. The letting agents' handyman had reported that there was no evidence of damp or a leak in the en-suite and the plumber had re-balanced the boiler which fixed the towel rail in the bathroom and had not noted any issues with the boiler. The view of the Tribunal was that on the basis of the evidence before it, there had been no unreasonable delay on the part of the Applicant or his letting agents which would justify the Respondent in withholding rent. The Tribunal was not persuaded that any abatement of rent was merited.
14. The Respondent had expressed the view that the arrears of rent at the date of the application were for two months, not three, but, having examined the Rent Statement, the Tribunal concluded that, whilst the tenancy agreement provided that rent should be paid in advance, the last payment of rent shown on that Statement, received on 26 February 2021, was for the period from 30 January 2021 to 28 February 2021. The rent payments due on 28 February, 30 March and 30 April had not been paid at that time. The updated Rent Statement provided to the Tribunal showed that the Respondent had paid £800 on 28 May 2021 and cleared the earliest debit, namely the rent due from 28 February to 30 March 2021. The updated Statement also included the apportionment of rent due and unpaid from 30 May 2021 down to the date that the tenancy terminated, namely 16 June 2021, the sum involved being £473.42.
15. Having carefully considered all the evidence before it, the Tribunal decided that the sum sought, as amended to £2,073.42 had become lawfully due by the Respondent to the Applicant.

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.

Legal Member: George Clark

Date: 23 August 2021

