



**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/21/1738

Re: Property at 36 Ashton Road, Raigmore, Inverness, IV2 3UE (“the Property”)

Parties:

**Trish McKeggie, Mr Tim McKeggie, Blackstand, Fortrose, Ross-shire, IV10 8SW
 (“the Applicants”)**

**Mr David Cruickshank, 2 Albyn Court, Nairn, Invernesshire, IV12 5PX (“the
Respondent”)**

Tribunal Members:

Sarah O'Neill (Legal Member)

Decision (in the absence of the respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order for payment by the respondent of the sum
of £1313.70 should be granted in favour of the applicants.**

Background

1. An application form was received on 20 July 2021 for a payment order brought in terms of rule 70 (Application for civil proceedings in relation to an assured tenancy under the Housing (Scotland) Act 1988) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicants were seeking payment of rent arrears of £1313.70 from the respondent in relation to the property, being the amount of arrears outstanding as at 10 July 2021.
3. The application included copies of:

- (i) the short assured tenancy agreement between the parties commencing on 13 April 2017
 - (ii) rent statement showing the rent outstanding up until 10 July 2021
 - (iii) rent increase notice dated 25 February 2019
 - (iv) email to the respondent from Scottish Highland Property Services, the applicants' agent, dated 6 July 2021 regarding his outstanding rent arrears.
4. Further email correspondence was received from Scottish Highland Property Services on behalf of the applicants on 20 August, 13 September and 21 September 2021.
 5. The application was accepted on 30 September 2021. Notice of the case management discussion (CMD) scheduled for 10 November 2021, together with the application papers and guidance notes, was served on the respondent by sheriff officer on behalf of the tribunal on 6 October 2021.
 6. The tribunal issued a direction to the applicants on 19 October 2021, requiring them to: 1) confirm in writing whether they had made a claim to My Deposits Scotland to award them the sum of £625 in respect of the tenancy deposit paid to them by the respondent and 2) provide written evidence confirming that the deposit had been repaid to them, and the reasons why it was repaid to them. A response was received from the applicants' agent on 26 October 2021.
 7. No written representations or application for a time to pay direction were received from the respondent prior to the CMD.

The Case Management Discussion

8. A CMD was held by teleconference call on 10 November 2021. The applicants were represented by Mr Ewen Smith of Scottish Highland Property Services. The respondent was not present or represented on the teleconference call.
9. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes in case the respondent had been detained. He did not appear, however, and no telephone calls, messages or emails had been received from him. The tribunal therefore proceeded with the CMD in the absence of the respondent in terms of rule 29 of the 2017 rules.
10. Mr Smith on behalf of the applicants referred the tribunal to the rent statement which had been lodged in support of the application, showing the outstanding rent arrears as at 10 July 2021 to be £1313.70. He said that the respondent had experienced some issues with his job for a period, and that he had started to get into arrears towards the end of his tenancy. He believed that the respondent had got another job shortly thereafter, but sad that he had not been

in contact regarding the unpaid rent. He confirmed that the respondent had vacated the property on 10 July 2021.

11. Mr Smith said that there had been a number of dilapidations within the property which had arisen during the respondent's tenancy. The applicants' agent had submitted photographic evidence of some of these issues to the tribunal with its email of 13 September 2021. Mr Smith confirmed that the applicants had claimed the respondent's deposit of £625 from My Deposits Scotland, and that this had been received by them on 2 September 2021. This sum had been put towards the dilapidations, which amounted to more than £4000 in reinstatement costs to date.
12. Mr Smith confirmed that the applicants did not wish to pursue the respondent for the reinstatement costs. He asked the tribunal to grant an order for the outstanding rent arrears of £1313.70. He also asked the tribunal to add to this sum the sum of £65 plus VAT in respect of the cost incurred by the applicants in instructing sheriff officers to trace the respondent's new address.

Findings in Fact

13. The tribunal made the following findings in fact:

- There was a valid short assured tenancy in place between Mr Tim McKeggie and the respondent.
- Mr McKeggie was the landlord in terms of the short assured tenancy agreement between the parties dated 13 April 2017. The title deed for the property showed that he owned the property jointly with Mrs Trish McKeggie. Mr McKeggie was the registered landlord for the property, with Mrs McKeggie registered as a joint owner on the Scottish Landlord Register.
- The rent due under the tenancy agreement, following an increase from 1 June 2019, was £650 per calendar month payable in advance.
- As at 10 July 2021, the respondent owed the applicants the sum of £1313.70.
- The full deposit of £625 paid by the respondent to the applicants had been returned to the applicant by the approved tenancy deposit scheme, and had been set against the dilapidations which had arisen during the respondent's tenancy.

Reasons for Decision

14. Having considered the terms of the rent statement provided with the application, the tribunal noted that this confirmed an outstanding balance of rent arrears up to and including 10 July 2021 in the sum of £1313.70. The tribunal noted that

the respondent had been notified that these arrears were due in terms of the email sent to him by the applicant's agent on 6 July 2021.

15. The tribunal was also satisfied that the deposit sum of £625 returned to the applicants by the approved tenancy deposit scheme had been put towards the tenant dilapidations.
16. With regard to the additional sum of £65 plus VAT requested by Mr Smith in respect of the sheriff officer's tracing fees, the tribunal noted that this claim, and any consequent amendment request relating to the sum claimed, had not been notified to either the tribunal or the respondent in advance of the CMD. Mr Smith indicated that, rather than delay matters further, he would not insist on the additional claim for this sum.
17. The tribunal therefore decided to make an order for payment by the respondent to the applicants of the sum of £1313.70.

Decision

The tribunal grants an order for payment by the respondent to the applicants for the sum of £1313.70.

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: Sarah O'Neill

Date: 10th November 2021