



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) Private Housing (Tenancies) Scotland Act 2016 and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ( “the Procedure Rules”)**

**Chamber Ref: FTS/HPC/CV/21/1764**

**Re: Property at 20 Hutcheon Low Place, Bridge of Don, Aberdeen, AB21 9WL (“the Property”)**

**Parties:**

**Ms Julia Crosbie, 39 Wellington Terrace, Aberdeen, AB12 3TJ (“the Applicant”)**

**Ms Serena Leyni, 94 Kittybrewster Square, Aberdeen, AB25 3DH (“the Respondent”)**

**Stonehouse Lettings, Osborne House, 27-30 Carden Place, Aberdeen, AB10 1UP (“the Applicant’s Representative”)**

**Tribunal Members:**

**Martin McAllister (Legal Member) and Mike Scott (Ordinary Member) (“the tribunal”)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent be required to pay the sum of Two Thousand eight hundred pounds forty nine pence (£2,800.49) to the Applicant.**

**Background**

- 1. This is an application for payment in respect of rent arrears and restitution in respect of cleaning, decoration, repairs and replacement of items following upon the termination of the tenancy. The total sum sought is £2,800.49. The application is dated 18<sup>th</sup> November 2021.**

2. The administrative history of the application is that an original case management discussion had been fixed which had been postponed because of illness of the Respondent. A case management discussion had been held on 3<sup>rd</sup> March 2022 at which there had been no appearance by the Respondent. The legal member of the Tribunal was not satisfied that service had been made on the Respondent and the matter was continued to a Hearing fixed for 4<sup>th</sup> May 2022. Prior to the Hearing, it was ascertained that service had not been successful and the Hearing was cancelled. The Applicant's Representative was given guidance as to the way forward with regard to the need to trace the address of the Respondent or for an application to be made for Service by Advertisement under Rule 6A of the Procedure Rules. There was a considerable passage of time before the Applicant's Representative provided the Respondent's address to the Tribunal.

### **The Hearing**

3. A Hearing was held by teleconference on 9<sup>th</sup> January 2022. The Applicant was present and was represented by Ms Lisa Campbell of Stonehouse Lettings.
4. There was no appearance by the Respondent. The tribunal had before it a Certificate of Intimation by Sheriff Officers and it was satisfied that notice of the Hearing together with a letter requiring any written representations to be submitted by 16<sup>th</sup> December 2022 had been served on the Respondent on 25<sup>th</sup> November 2022.

### **Preliminary Matters**

5. It was noted that a Direction under Rule 16 of the Procedure Rules had been made on 3<sup>rd</sup> March 2022 and that this required parties to provide sets of documents in a paginated form and with an index. Ms Campbell said that she had no knowledge of this although she accepted that she had a copy of the case management discussion note which had been sent to her with the Direction on 7<sup>th</sup> March 2022.
6. It was pointed out to Ms Campbell that, had the tribunal required to hear evidence, there might have been difficulties for the Applicant because of the failure to produce documentation in a paginated form and because of a lack of vouching of some of the heads of claim.
7. Findings in Fact
  - 7.1 The Applicant and the Respondent entered into a private residential tenancy for the Property which commenced on 25<sup>th</sup> June 2019.
  - 7.2 The tenancy was terminated on 2<sup>nd</sup> October 2020.
  - 7.3 The monthly rental in terms of the tenancy was £430.

- 7.4 At termination of the tenancy, there were rent arrears of £113.10.
- 7.5 Subsequent to termination of the tenancy, the Applicant required to carry out repairs to the Property as a consequence of the actions of the Respondent.
- 7.6 Subsequent to termination of the tenancy, the Applicant required to replace or repair items in the Property which were damaged or which were missing.
- 7.7 Subsequent to termination of the tenancy, the Applicant was required to clean or arrange for cleaning of the Property as a consequence of the condition in which the Respondent had left the Property.
- 7.8 Subsequent to termination of the tenancy, the Applicant required to arrange for decoration works to be carried out to the Property as a consequence of the condition in which the Respondent had left the Property.
- 7.9 The cost of cleaning, repair and replacement of items as a consequence of the actions or failures of the Respondent amounted to £2,687.39.

## Reasons

8. The Applicant had lodged a statement and documentation detailing the costs which she claimed had been incurred as a result of the Respondent's failure to leave the Property in a tenable condition and as a consequence of damage caused by the Respondent. The documentation also referred to costs incurred by the Applicant in replacement of items missing from the Property and cleaning and decoration which had to be carried out after termination of the tenancy.
9. The tribunal was satisfied that the Respondent had details of the Hearing intimated to her and had also been given the opportunity to make written representations. The Respondent had submitted no written representations and had not appeared at the Hearing or arranged for someone to represent her.
10. It is for an applicant to make her/his case and for a respondent to challenge this and to lead any evidence to counter the applicant's position. In such circumstances, a tribunal can weigh the evidence and come to a determination.
11. In the application before it, the tribunal had some concerns about vouching about certain heads of claim. It was always open for such concerns to be assuaged after oral evidence had been led. In this case, the tribunal was mindful of its obligations in considering the application and, in particular, what has been referred to as *pars judicis*- "what a judge has a duty to do."
12. The tribunal was assisted by the Upper Tribunal Decision in the case of *Woro v. Brown* (UTS/AP/21/0031). In that case the Upper Tribunal Judge found that, if the Tribunal was satisfied that it was competent to determine

the application and that it had jurisdiction to do so, then it was not appropriate for it to explore the relevance of the application before it where a respondent had chosen not to make representations or participate in a Hearing.

13. The tribunal determined that it had competence and jurisdiction to deal with the application by virtue of the Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2006. The application is in respect of civil proceedings arising from a private residential tenancy.

14. The Respondent had not engaged with the Tribunal process, had made no written submissions and had not appeared at the Hearing. In these circumstances, the tribunal determined that the Applicant was entitled to be granted the payment order which was sought and it was not the role of the tribunal to go beyond what had been lodged and to test the documentary evidence submitted by the Applicant or to hear oral evidence.

#### **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.

**Martin J. McAllister**  
**Legal Member**  
**9<sup>th</sup> January 2023**