



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/21/2568**

**Re: Property at 7 Berriedale Quadrant, Wishaw, ML2 7YY (“the Property”)**

**Parties:**

**Mr Colin Keenan, Mrs Laura Keenan, 16 Castleview Road, Strathaven, ML10 6HD (“the Applicant”)**

**Mrs Cheryl Snaddon, Mr Neil Nisbet, 35 Dale Drive, Motherwell, ML1 4ND (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £4,382.26 be granted in favour of the Applicant.**

1. This was the second case management discussion (CMD) to consider the application by the Applicant for an order for payment in respect of alleged rent arrears from the Respondent who was the tenant in a tenancy with the Applicant who are the landlords of the Property.
2. The application had been lodged on 18<sup>th</sup> October 2021 and sought payment of the sum of £4,275 in respect of rent arrears the Applicant claimed had not been paid by the Respondents.
3. The following documents were lodged with the Application namely:-
  - a. Tenancy agreement dated 16<sup>th</sup> and 26<sup>th</sup> October 2020
  - b. Rent statement showing a sum due as at 24<sup>th</sup> October 2021 of £4,351.61
4. The Tribunal sent a direction on 16<sup>th</sup> December 2021 asking for:-
  - a. clarification of the amount sought as the amount in the rent statement varied from the amount in the application,

- b. advising that if the Applicant wished to increase the amount sought they would have to ask in writing to amend the sum and send intimation of that to the Respondents,
  - c. and asking if the Respondents had left the property and if so what happened to the deposit.
5. In response to the direction from the Tribunal the Applicant lodged a revised application for an increased sum of £4,382.26 on 11<sup>th</sup> January 2022 together with a trace report confirming new addresses for the Respondents. This was not copied over to the Respondents as it would not have had time to be sent to them and their addresses had been changed. The Tribunal determined to discuss this and agree the way forward regarding service at the CMD.
6. A CMD was scheduled to be held by teleconference at 10am on 12<sup>th</sup> January 2022 and both the Applicant's representative, Rent Locally and the Respondents, had been advised of the date and time of the CMD, Neither party attended despite the Tribunal waiting for a further 15 minutes. It was noted however that service on the Respondents had been made by letter box service and given the Applicant's response to the direction it was not clear when the Respondents had left the Property and if they had received the papers.
7. As the Applicant had been in correspondence with the Tribunal as recently as the day before the Tribunal considered that it was appropriate, and in accordance with the overriding objective, to continue the CMD to allow the Applicants to explain why they were not in attendance and to allow service of the papers and in particular the latest submissions from the Applicant on the Respondents.
8. The Tribunal made a Direction asking for clarification of further details regarding why the rent statement did not match the sum sought and what happened to the deposit and also advising the Applicants to attend at the next CMD failing which it would be likely the case would be dismissed.
9. The Tribunal also directed that the papers be reserved on the Respondents at their new address as the Tribunal was not convinced they would have received the original papers and the Respondents were invited to make any representations they wish to make in relation to this application and to attend the next CMD.
10. The papers were duly reserved on the Respondents at a further new address of 35 Dale Drive Motherwell by Sheriff Officers on 20<sup>th</sup> April 2022 and the applicant's representative was advised of the new date and time of the CMD by letter sent by e-mail on 14<sup>th</sup> April 2022.

### **CMD 11<sup>th</sup> May 2011**

1. The CMD took place by teleconferencing and the Legal Member waited until 10.10 to see if the Respondents were going to join the call. The Respondents did not join and were not represented at the CMD. The Respondents have not lodged any written submissions for the Tribunal to consider. The Applicant was represented by Ms Shirleyann McCulloch of Rent Locally.
2. The legal member made introductions and explained the purpose and order of proceeding. Given the Respondents were served notice of this

CMD by sheriff officers personally the Tribunal agreed it was appropriate to continue in their absence.

3. The Tribunal asked as a preliminary matter why the Applicant did not attend the previous CMD or respond to the direction dated 12<sup>th</sup> January. Ms McCulloch advised that they had responded and she explained that she herself had been off work on that day and unfortunately the teleconference call had been missed but when they received the CMD note and direction her colleague Lauren Foote had replied by e-mail on 18<sup>th</sup> January to apologise for this oversight and to respond to the direction and this had been acknowledged by the Tribunal admin team.
4. Ms McCulloch submitted another copy of this e-mail as the legal member advised she had not been sent a copy and Ms McCulloch also apologised for no-one attending in her place on 12<sup>th</sup> January.
5. Ms McCulloch confirmed that the e-mail and attachments of 18<sup>th</sup> January explained that the tenants had actually left on 26<sup>th</sup> October and this was why there was a slight increase in the amount of rent arrears due as per her amended application. She confirmed the rent due and outstanding to 26<sup>th</sup> October was £4,382.26 as per the rent statement and the extra pro rata amount due for 2 days which is what the landlord was seeking today.
6. Ms McCulloch confirmed that the full amount of the deposit had been reclaimed and put towards the cost of clearing, cleaning and repairing damage left by the tenants after they vacated. She advised that the Property was filthy with evidence of maggots and that there were numerous black bags of rubbish that needed removed.
7. She advised that her firm's e-mail of 18<sup>th</sup> January contained attachments confirming this work needed done and the Tribunal noted when it finally saw the attachments that this was indeed confirmed.

## **FINDINGS IN FACT**

1. The parties entered into a lease of the Property which commenced on 19<sup>th</sup> October 2020 and ended on 26<sup>th</sup> October 2021.
2. The Rent due in terms of the lease is £475 per calendar month payable in advance
3. The tenant removed from the Property and the tenancy ended on 26<sup>th</sup> October 2021
4. The rent outstanding as at that date is £4,382.26
5. The Respondent
6. The Deposit of £950 has been reclaimed by the applicant and put towards the cost of clearing cleaning and repairing damage at the Property is therefore not available to reduce the arrears of rent.

### **• Reasons for Decision**

7. The parties have entered into a lease where the Respondent has leased the property from the Applicant and has agreed to pay £475 per month in rent.
8. The Respondents have failed to pay the full rent due. They have left the Property and the tenancy ended on 26<sup>th</sup> October 2021. This was confirmed verbally by the Applicant's representative and is confirmed in their e-mail

correspondence. The deposit was reclaimed to cover costs that are not related to rent arrears.

9. The Respondents have not responded to the application, have made no written representations nor attended this CMD.
10. The Tribunal accepts the written evidence and verbal statements made by the Applicant's representative, who the Tribunal found clear and credible in her evidence that the rent outstanding as of 26<sup>th</sup> October 2021 amounts to £4,382.26. In the absence of any representations from the Respondent the Tribunal finds it fair and appropriate to make an order for payment for that sum today.
11. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed with interest as stated above.

- **Decision**

An order for payment of the sum of £4,382.26 is granted

### **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.**



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**Legal Member: Jan Todd**

**Date: 11<sup>th</sup> May 2022**