



**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 (“the Act”) and Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/CV/21/2710**

**Re: Property at Easter Lochs Farmhouse, Muir O' Lochs, Nr Garmouth, Moray, IV32 7LG (“the Property”)**

**Parties:**

**Trustees of Inkersall Furbs, The Estate Office, Inkersall Farm, Bilsthorpe, Newark, Notts, NG22 8TL (“the Applicant”)**

**Mr David Stewart, Miss Angela Elrick, 22 East Street, Fochabers, Morayshire, IV32 7EX (“the Respondents”)**

**Tribunal Members:**

**Karen Moore (Legal Member) and Jane Heppenstall (Ordinary Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an Order for Payment in the sum of THREE HUNDRED AND NINETY FOUR POUNDS THIRTY PENCE (£394.30) STERLING be issued.**

**Background**

1. By application received between 2 November 2021 and 24 December 2021 (“the Application”), the Applicant applied to the Tribunal for an Order for payment of rent arrears and other costs totalling £587.93 due to it by the Respondents and arising from a former tenancy between the Parties. The Application comprised a copy of the

tenancy agreement and a statement that rent amounting to £354.43 is due, that the Respondents are liable for the cost of £193.50 for emptying the septic tank at the Property and that the Respondents are liable for the cost of £40.00 for sweeping the chimney at the Property. The Application was accepted by the Tribunal and a Case Management Discussion (the "CMD") was fixed for 22 March 2022 at 10.00 by telephone conference.

2. The CMD took place on 22 March 2022 at 10.00 by telephone conference. The Applicant was represented by Mr. Michael Woodcock. Both Respondents took part and were unrepresented.
3. The Respondents disputed the sum claimed as due by them stating that they had paid £295.00 to have the septic tank emptied during the tenancy and that this sum should be deducted from the rent arrears of £354.43. The Respondents' position was that the chimney had been swept during the tenancy at a cost of £295.00. They accepted that the septic tank had not been emptied at the end of the tenancy and that the chimney had not been re-swept at the end of the tenancy under explanation that they had been advised by Shelter Scotland that these obligations were not lawful and that the costs should fall to the landlord.
4. Mr. Woodcock maintained that the sums due are properly due in respect of the additional terms of the tenancy agreement and maintained that responsibility for emptying the septic tank and sweeping the chimney rested with the Respondents throughout the tenancy and again at the end of the tenancy. He stated that the Respondents were not entitled to offset the septic tank cleaning costs from the rent due by them.
5. The Tribunal, therefore, adjourned the CMD to a Hearing of evidence to determine the amount of rent and other costs, if any, due by the Respondents to the Applicant.

## Hearing

6. The Hearing took place on 27 May 2022 at 10.00 by telephone conference. The Applicant was represented by Mr. Michael Woodcock. Neither Respondent took part, nor were they represented.
7. Mr. Woodcock confirmed the sum sought is £587.93 as set out in the Application. He confirmed that the rent due is £354.43 as set out in the rent statement lodged as part of the Application. With reference to the cost of sweeping the chimney, Mr. Woodcock explained that the chimney sweep had been instructed to sweep a number of chimneys and that £40.00 was an equitable cost apportioned to the work carried out on the Property. The contractor had invoiced the Applicant for unblocking the chimney at the Property and so the actual cost is likely to have been higher than the £40.00 charge for a routine sweep. With regard to the septic tank, Mr. Woodcock advised that the septic tank had not been emptied by the Applicant at the end of the tenancy as the new tenants had accepted the "property as it was". Mr. Woodcock explained that the principle on which the Applicant relies is that the tenants have an obligation to pay for

the septic tank to be emptied at least once a year, regardless of whether they have it emptied or not. He explained that it is not easy to know when a tank needs emptied and that failure to empty it regularly has caused damage to the land. Mr. Woodcock confirmed to the Tribunal that he had not lodged any invoices or receipts with the Tribunal and that the sum of £193.50 sought is based on the standard charge levied by Scottish Water for emptying domestic septic tanks.

8. Mr. Woodcock advised the Tribunal that there had been other breaches of the tenancy agreement which occurred costs which the Applicant had not pursued.

### **Summary of the Issues**

9. The issue for the Tribunal is to determine the amount of rent and other costs, if any, due by the Respondents to the Applicant.

### **Findings of Fact**

10. The Tribunal's findings in fact were made from the Application and the Hearing.

11. The Tribunal found the following matters established:

- i) There had been a private residential tenancy agreement between the Parties at a monthly rent of £595.00 ("the Tenancy");
- ii) Rent arrears amounting to £1,544.30 had accrued at the end of the Tenancy;
- iii) The Respondents tenancy deposit of £1,190.00 was applied to the rent arrears reducing the sum due to £354.30;
- iv) The private residential tenancy agreement contained additional tenancy terms;
- v) One of the additional tenancy terms is that the Respondents undertake to arrange and pay for the emptying of the septic tank whenever necessary and at least once a year and at the end of the Tenancy;
- vi) The Respondents did not arrange and pay for the emptying of the septic tank at the end of the Tenancy;
- vii) The Applicant did not arrange and pay for the emptying of the septic tank at the end of the Tenancy;
- viii) The standard charge levied by Scottish Water for emptying domestic septic tanks is £193.50;
- ix) The Property was re-let after the end of the Tenancy with the new tenants accepting the septic tank in the condition as left by the Respondents;
- x) Another of the additional tenancy terms is that the Respondents will arrange and pay for the sweeping of any chimneys at least once in each year and
- xi) The Applicant arranged and paid for the sweeping of the chimney at the end of the Tenancy at a cost of around £40.00.

### **Decision of the Tribunal and reasons for the Decision.**

12. The Tribunal's decision is based on the Application with supporting documents and the Hearing.

13. The Tribunal accepted Mr. Woodcock's evidence in respect of the rent arrears and accepted that the Respondents are due and owing £354.30 to the Applicants in respect of rent. Therefore, the Tribunal determined that the Applicant is entitled to an Order for Payment in this amount.
14. The Tribunal accepted that the additional tenancy terms are competent and lawful and that the responsibility for emptying the septic tank and sweeping the chimneys lies with the Respondents as tenants. The Tribunal accepted that it was not for the Applicants as landlords to enquire of the Respondents and ensure that they have complied with the additional tenancy terms during the Tenancy. The Tribunal accepted that the Applicant as landlords is entitled at common law to recovery their financial losses as result of the Respondents failing to comply with their obligations of the Tenancy.
15. The Tribunal accepted that the Applicant required to arrange and pay for the chimney to be swept at the end of the Tenancy and that, on the balance of probabilities, this cost was incurred by the Respondents failing to meet their obligation to sweep the chimney during the tenancy. The Tribunal accepted that the cost of sweeping the chimney was at least £40.00 and so determined that the Applicant is entitled to an Order for Payment in this amount.
16. The Tribunal accepted that the Respondents had not arranged or paid for the emptying of the septic tank at the end of the Tenancy. As the Applicant had not arranged or paid for the emptying of the septic tank at the end of the Tenancy and so had not incurred the cost of emptying the septic tank and as new tenants had accepted the septic tank in the condition as left by the Respondents, the questions for the Tribunal were:
- i) does the Applicant have a direct loss which it is entitled to claim in term and, if so, what is the extent of that loss;
  - ii) If not, is the Applicant entitled to compensation for breach of contract and if so, what should the amount of that compensation be?
17. In dealing these questions, the Tribunal determined as follows:
- i) As the Applicant had not arranged or paid for the emptying of the septic tank at the end of the Tenancy and as the Applicant had re-let the Property without paying for the septic tank to be emptied, the Applicant had no direct loss and had passed any indirect loss on to the new tenants.
  - ii) The Tribunal accepted that Scots Law provides for compensation for loss suffered for breach of contract. However, in this case, although the Respondents are in breach of contract as they did not "arrange and pay" for the emptying of the septic tank at the end of the Tenancy, no loss either direct or indirect has been suffered by the Applicant and so there is no entitlement to compensation. In any event, The Tribunal took the view that the obligation on the Respondents is to "arrange and pay" for emptying the septic tank and so is a two-part obligation with

the amount to be paid linked to the work carried out. The Tribunal took the view that the sum of £193.50 claimed by the Applicant is an arbitrary amount based on a third party's charging structure and not related to the contractual terms of the Tenancy and so the Applicant is not entitled to an Order for Payment in this amount.

### **Decision**

18. The Tribunal, therefore, issued an Order for Payment in the sum of £394.30.

19. This decision is unanimous.

### **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.**

**Karen Moore**

27 May 2022

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**Legal Member/Chair**

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**Date**