



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 70(1) of the Private Housing
Tenancies (Scotland) Act 2016**

Chamber Ref: FTS/HPC/CV/22/2148

**Re: Property at 4 Chestnut Park, Banchory, Aberdeenshire, AB31 5PP (“the
Property”)**

Parties:

**Mr Keith Brian Mitchell Urb Colina Campina Lte, 12 CP 898 A, Sao Bras de
Alportel, 8150-022, Portugal (“the Applicant”)**

**Mr Murray McGuigan, Miss Jodie Valentine 11 Chestnut Crescent, Banchory,
Aberdeenshire, AB31 5PE; 11 Chesnut Crescent, Banchory, AB31 5PE (“the
Respondent”)**

Tribunal Members:

Ruth O'Hare (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to make an order in the sum of Eight thousand eight
hundred and forty one pounds and fourteen pence (£8841.14) Sterling with
interest at the rate of eight per cent per annum from the date of this decision
until payment**

Background

1 By application to the Tribunal the Applicant sought an order for payment of
against the Respondents in respect of outstanding rent arrears and repair
costs. In support of the application the Applicant provided the following
documentation:-

- (i) Private Residential Tenancy Agreement between the parties which commenced
on 18 December 2019;
- (ii) Rent Statement;

- (iii) Copy invoices detailing the cost of repairs to the property;
 - (iv) Copy letter from Aberdein Considine to the Respondents;
 - (v) Copy emails from Margaret Duffus Leasing to the Respondents;
 - (vi) Copy inventory of contents dated 16 December 2019;
 - (vii) Copy final inspection email from Margaret Duffus Leasing.
- 2 In response to a request for information from the Tribunal the Applicant clarified that the tenancy deposit in the sum of £1250 had been retrieved from the tenancy deposit scheme and applied to the outstanding rent arrears.
- 3 By Notice of Acceptance of Application the Legal Member with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. A Case Management Discussion was therefore assigned for 23 November 2022. A copy of the application paperwork together with notification of the date and time of the Case Management Discussion and instructions on how to join the teleconference was intimated to the Respondents by Sheriff Officers.
- 4 Following service of the application the Tribunal received a further invoice from the Applicant as vouching for the repair costs. A copy of the invoice was intimated on the Respondents.

Case Management Discussion

- 5 The Case Management Discussion took place by teleconference on 23 November 2022. The Applicant was represented by Ms Karolina Naglik, Trainee Solicitor of Aberdein Considine. The Respondents were not present. The Tribunal noted that they had received service of the application paperwork together with notification of the date and time of the Case Management Discussion and therefore determined to proceed in their absence.
- 6 Ms Naglik addressed the Tribunal on behalf of the Applicant. She advised that the lease between the parties had commenced in December 2019. The tenancy was a private residential tenancy. The lease provided for rent payable of £1250 monthly in advance. The rent was to be paid by standing order to the leasing agent Margaret Duffus Leasing. The Respondents provided the Applicant with a Notice to Leave and left the property in March 2022. The reason for terminating was the Respondents could no longer afford the rent and wished to move elsewhere. Initially the Respondents did make payments of rent but payments soon became erratic. Arrears had accrued between 17 August 2021 and 1st March 2022. The Respondents had received reminders from the leasing agent about the arrears that had accrued. They had indicated on occasion that full payment would be forthcoming as the Respondents were due to receive a compensation payment however nothing has been received in that regard. A final demand letter was issued to the Respondents by Aberdein Considine but there was no response. The total rent arrears were £6784.25 following deduction of the deposit. The lease agreement in Clause

37 allowed the Applicant to apply interest at the rate of eight per cent per annum from the date the arrears fell due until payment.

- 7 Ms Naglik then moved on to the repair costs. The Applicant had incurred costs as a result of the Respondents failing to leave the property in a reasonable condition. This included a full clean of the property, various replacement items and tasks undertaken by a handyman and replacement keys. Vouching had been provided for these costs and lodged with the application paperwork. Regarding the replacement keys the leasing agent had advised the Respondents that if all keys were not returned the Respondents would be liable for the costs of replacement. The invoices equated to £1,208.89. Ms Naglik referred to the relevant section of the lease which entitled the Applicant to recover these costs.

- 8 Ms Naglik confirmed that steps had been taken to address the costs with the Respondents. There had been significant email correspondence with them from the leasing agent. The Respondents initially advised that the arrears had arisen as a result of the coronavirus pandemic. They had also had a baby in early 2021. However the Respondents were regularly updated on the outstanding rent arrears and given opportunities to address the arrears which they failed to do. In February 2021 the Respondents had advised that they were applying for universal credit, however nothing was paid to the Applicant in this regard. The first named Respondent had then advised that he was due to start a new job in September 2021 and assurances were provided that the arrears would be cleared and would not accrue again. In February 2022 the leasing agent made attempts to confirm when the Respondents would receive the aforementioned compensation payment. It had not been confirmed what the compensation related to. The first named Respondent was likely in employment but the Applicant did not have any details and could not therefore assess his affordability for payments. There was no information in respect of the second named Respondent. The Applicant had been left out of pocket due to the arrears and the repair costs. The Respondents had not made any contact or recent proposals for payment. The Applicant was therefore seeking a payment order against the Respondents in the sum of £7933.14 with interest on the rent arrears element.

Findings in Fact and Law

- 9 The Applicant entered into a Private Residential Tenancy Agreement with the Respondent which commenced on 18 December 2019.

- 10 The tenancy terminated on 1 March 2022 when the Respondents vacated the property.

- 11 In terms of Clause 8 of the said tenancy agreement the Respondents undertook to pay rent at the rate of £1250 per month.

- 12 As at the date of termination of the tenancy arrears in the sum of £6,784.25 were outstanding, following the deduction of the tenancy deposit in the sum of £1250.
- 13 In terms of Clause 37 of the said tenancy agreement the Applicant is entitled to recover interest at the rate of eight per cent per annum on any outstanding rent payments from the date they fall due until payment. As at the date of the Case Management Discussion interest in the sum of £848 has accrued.
- 14 Following the termination of the tenancy the Applicant required to carry out repairs to the property in order to restore the property to a reasonable standard which included carrying out redecoration, removing rubbish, replacing light bulbs, carpet cleaning, repairing the garden fence, replacing keys and repairing various fixtures and fittings including a cupboard, curtain rails, a toilet, showers and ovens.
- 15 The Applicant incurred costs in the sum of £1208.89 in respect of said repairs.
- 16 In terms of Clause 17 of the said tenancy agreement between the parties the Respondents are liable for payment of said repair costs.
- 17 The Respondents are therefore liable to pay the sum of £8841.14 to the Applicant as at the date of the Case Management Discussion.
- 18 Despite repeated requests the Respondents have refused or delayed in making payment of the amount owed.

Reasons for Decision

- 19 The Tribunal was satisfied at the Case Management Discussion that it had sufficient information upon which to make a decision and that to do so would not be prejudicial to the interests of the parties. The Respondent had been given the opportunity to participate in the Case Management Discussion but had chosen not to do so.
- 20 Based on its findings in fact the Tribunal was satisfied that the Respondent was liable to pay the sum of £6,784.25 to the Applicant in accordance with their contractual obligations under the tenancy agreement between the parties in respect of the rent arrears and that the Applicant was entitled to recover interest at the rate of eight per cent per annum from the date the arrears fell due until payment. The Tribunal therefore required to calculate the interest that had accrued prior to the Case Management Discussion and deemed this to be £848 resulting in a total sum of £7,632.25.
- 21 Furthermore the Tribunal was satisfied, based on the vouching provided and the account of the damage to the property at the termination of the tenancy,

that the Respondents were liable to pay the repair costs incurred by the Applicant in the sum of £1208.89. The Tribunal considered it would be appropriate to use the contractual figure in the tenancy agreement as a guide for applying interest to the repair costs, and therefore determined make an order for payment in the sum of £8,841.14 with interest applied to the whole sum at the rate of eight per cent per annum from the date of the decision until payment.

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

Ruth O'Hare

**Ruth O'Hare
Legal Member/Chair**

**23 November 2022
Date**