



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/22/3475**

**Re: Property at 5 Cairn Trodlie, Peterhead, AB42 2BP (“the Property”)**

**Parties:**

**A&J Investments, Inverugie, Ruach, Peterhead, AB42 3DE (“the Applicant”)**

**Mrs Kate Coutts, Michael Cunliffe, 114 Forman Drive, Peterhead, AB42 2XG; UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Valerie Bremner (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of seventeen thousand five hundred and eighty-five pounds and twelve pence only (£17585.12) be granted in favour of the Applicant and against the Respondents.**

**Background**

1.This application for civil proceedings arising from a private residential tenancy was first lodged with the Tribunal on 22<sup>nd</sup> September 2022 and accepted by the Tribunal on 25<sup>th</sup> October 2022.A case management discussion was initially fixed for 20<sup>th</sup> January 2023, but this could not proceed as the application and papers required to be served by advertisement in terms of Rule 6A of the Tribunal rules of procedure on the second Respondent.

**Case Management Discussion**

2.A further case management discussion was fixed for 23<sup>rd</sup> February 2023 at 10am. On that date the Applicant did not attend but was represented by Ms Leiper of

Geraghty Gibb Property Management. There was no appearance by the Respondent Kate Coutts and the Tribunal noted that a letter with the new case management discussion date had been sent to her. The Tribunal had sight of a certificate of service of application and papers on the Tribunal website as regards the Respondent Michael Cunliffe and was satisfied that it was appropriate to proceed in the absence of both Respondents as fair notice of the application and case management discussion had been given to both of the Respondents in terms of the procedure rules.

3. Ms Leiper was seeking a payment order in relation to unpaid rent during a tenancy at the property and also payment in respect of damage to the property and required repairs and removal of rubbish.

4. At the case management discussion on 23<sup>rd</sup> February 2023 the Tribunal had sight of the application, a tenancy agreement, a rental statement, a list of damages claimed and a number of invoices. Ms Leiper indicated that she believed that she had sent in a number of photographs of the property and a video showing its condition after the end of the tenancy. The Tribunal did not have these and during the case management discussion Ms Leiper submitted photographs in a format which could be viewed and crossed over to the Respondents. The Tribunal legal member decided that it was appropriate to consider these in relation to the application given that Ms Leiper believed she had lodged these already. The Tribunal legal member was able to consider these during the case management discussion.

5. Ms Leiper explained to the Tribunal that the tenancy had ended on 11th August 2022. A Notice to Leave had been served on the Respondents and the Respondent Katie Coutts said that she was going to move out and would surrender the keys. There was a good deal of discussion between Ms Leiper and Ms Coutts regarding moving out. The keys were not returned by either Respondent. Ms Coutts had said on a number of occasions that she would collect rubbish at the property after the tenancy had ended, but this was not done either. Ms Coutts had advised Ms Leiper that Mr Cunliffe had not lived at the property for about a year before the end date of the tenancy. However, Ms Leiper advised that no attempt had been made to communicate that to her formally at any time and she had been advised by neighbours and a gas safety engineer who visited the property that Mr Cunliffe appeared to be at the property for the same period of time as Ms Coutts. Two children also stayed at the property with the Respondents.

6. An end date for the tenancy was ultimately agreed with Ms Coutts after she intimated that she had moved out of the property. The property was not cleared despite suggestions by Ms Coutts that this would be done, and the landlord Applicant had to do this himself.

7. Regarding the rent arrears claimed Ms Leiper advised the Tribunal that the rent of £700 per month had been paid by the Respondents for the first four months of the tenancy which had started on 3<sup>rd</sup> April 2020 and by December 2020 they had fallen into arrears of £1400. Ms Leiper understood that universal credit was not being used to pay the rent by the Respondents. The Respondents had offered to pay the rent arrears and the landlord had given them many chances to do this, but the rent arrears had not been paid. Ms Leiper had tried to move forward with an application to a tenant hardship fund, but Ms Coutts had not cooperated with that in giving required

information. The outstanding rent arrears accrued at the property as of the end of the tenancy in August 2022 amount to £9528.23.

8. Ms Leiper was also claiming payment of damages on behalf of the landlord. She advised the tribunal that the Respondents had failed to take reasonable care of the property during the tenancy and had failed to keep the property in good tenable order, all as required by the tenancy agreement. She advised the Tribunal that the house and outhouses had to be cleared of rubbish, the kitchen had to be replaced as it had been painted with unsuitable paint and some doors and other kitchen fittings were damaged, some internal glass had to be replaced, all floorcoverings required to be replaced as they were soiled by animals and the walls were damaged as though someone had attempted to strip the wallpaper, which required repainting throughout. Doors were missing at the property also. The landlord had sourced and had fitted a second-hand kitchen and all carpets and flooring had been replaced. The landlord had required to spend many hours scrubbing floorboards at the property due to the smell of animal urine and faeces.

9. The Tribunal had access to a number of invoices lodged for work at the property and materials which Ms Leiper indicated related to required work at the property after the tenancy had ended. A Gas Safe register invoice related to plumbing work done in the kitchen at the property which included work done after radiators had been ripped off walls. There were three invoices from Howdens which were said to relate to kitchen flooring, a brass night latch and a sink strainer waste kit. An invoice from Step Up had been lodged which appeared to relate to plastering and painting at the property. There was a further invoice for sale and delivery of a kitchen, invoices for a new kitchen worktop and wood, an invoice for carpets, work done in the kitchen, an invoice for a replacement granite worktop in the kitchen, an invoice for removal of rubbish and dismantling the kitchen and scrubbing floors as well as an invoice for joinery work.

10. The Tribunal legal member noted that the submitted invoices amounted to £8815.85, less than the amount being claimed by the Applicant in the Application but Ms Leiper confirmed later that £8815.85 was the sum being claimed in relation to damage at the property.

11. Ms Leiper advised that a deposit of £350 had been recovered and should be set against the sums being claimed.

12. The tribunal legal member considered the photographs lodged and noted that these were small in size and not always taken in close up and these did not appear to show the extent of the damage to the kitchen which had been described at the case management discussion on 23<sup>rd</sup> February 2023. The same appeared to be the case regarding the suggestion that all carpets and flooring required to be replaced and all walls painted at the property. Some photographs lodged appeared to show unstained carpet and walls where paint appeared to be intact. The invoice for work done in the kitchen appeared to include wiring for new kitchen appliances and it was not clear how this related to any damage suggested to be caused by the Respondents during the tenancy.

13.The Tribunal legal member indicated that further information was required regarding these matters. Ms Leiper indicated that the landlord had travelled away from home on 23<sup>rd</sup> February 2022, and she might be able to get a statement from him with more information or he might be able to attend any further case management discussion fixed. The Tribunal member indicated that either would be acceptable in order to obtain further information and as well as the matters referred to above in paragraph 12 the Tribunal was seeking clarification that the invoices lodged had been paid and that the sums had not been met by another source such as an insurance policy and clarification of the total sum said to be due regarding damage and repair.

14.The case management discussion was adjourned to 3<sup>rd</sup> March 2023 at 2pm for Ms Leiper to obtain further information from the landlord on the points raised by the Tribunal Legal member.

15.At the case management discussion on 3<sup>rd</sup> March 2023 the Applicant was again represented by Ms Leiper of Geraghty Gibb Property Management. There was no appearance by or on behalf of the Respondents. The Tribunal Legal Member was aware that a letter with the date of the adjourned case management discussion had been sent to the First Respondent Kate Coutts and the application had continued to be served by advertisement on the Tribunal website on the second Respondent Michael Cunliffe. In these circumstances it appeared that the Respondents had received fair notice of the adjourned case management discussion and the Tribunal Legal Member considered that it was appropriate to proceed in the absence of the Respondents.

16.Since the case management discussion on 23<sup>rd</sup> February 2023 Ms Leiper had lodged a video taken by Mr Gardiner on behalf of the Applicant company at the property after it was vacated by the Respondents. This video showed rubbish and possessions strewn across the floors at the property, carpet missing in some areas, laminate flooring panels not in place, walls with areas where paint or plaster appeared to be missing, stained carpets and what appeared to be animal faeces in some areas. The garden at the property had possessions lying around and an outhouse was full of rubbish. In the video of the kitchen, it could be seen that units were painted, the worktop covered in items and the floor covering appeared dirty.

17.Mr Gardiner on behalf of the Applicant company had lodged a statement regarding the condition of the property after the tenancy ended. In this he confirmed that the work at the property had been carried out and the Applicant had paid all the invoices which had been submitted to the Tribunal. In the kitchen Mr Gardiner indicated that the doors were solid oak and no permission had been given for them to be painted. The doors had been painted with gloss paint ( a tin could be seen on the video) with a very poor finish and no primer used. The doors had been removed to paint them and they had runs of paint on the back of the doors, hinges were broken and loose in the carcasses. Mr Gardiner took the view that these could not have been repaired and sourced a set of second-hand kitchen units to replace those which had been ruined. The kitchen layout was slightly different after replacement, so some wiring had to be redone and additional plumbing work was required. He pointed out that this was much cheaper than sourcing and fitting a new kitchen for the property.

18.Mr Gardiner confirmed in his statement that every floor surface at the property was “stinking with cat urine and cat poo” after the tenancy ended and he believed a cat had been left in the house for weeks on end. The urine had gone through the carpets and into the floorboards and the laminate floor joints were also impregnated with urine. He required to use litres of white vinegar to neutralise the smell and he spent many hours scrubbing the floorboards to deal with the issue of this smell. He said that he had no choice but to lift the floor coverings and dispose of them and replace them.

19.Mr Gardiner also confirmed that he required to get a painter to patch and fill holes and paint walls at the property where some holes had been made or paint was missing at the property after the end of the tenancy. When a wall had to be repainted after damage caused Mr Gardiner in his statement that other walls had to be repainted to match them and this was a small part of the decorators invoice submitted.

20.The Tribunal Legal Member considered that the Tribunal had sufficient information upon which to make a decision and that the proceedings had been fair.

### **Findings in Fact**

21.The Applicant and Respondents entered into a private residential tenancy at the property with effect from 3<sup>rd</sup> April 2020.

22.The monthly rent payable at the property during the tenancy was £700 per month.

23.A deposit of £350 was paid at the start of the tenancy and recovered by the Applicant.

24.The tenancy ended on 11<sup>th</sup> August 2022.

25.The tenancy agreement was entered into by both Respondents and at no stage did the Respondent Michael Cunliffe approach the Applicant or the Letting agent to indicate that he had left the property or to indicate that the Respondents wished to change the terms of the tenancy agreement.

26.The Respondents fell into rent arrears within 4 months of the start of the tenancy and these continued to accrue for the rest of the tenancy.

27.The Respondents made a number of offers to pay the rent arrears and had been given opportunities to do this by the Applicant, but the rent arrears were never cleared.

28.When the Respondents paid rent during the tenancy it was paid by them and not by universal credit.

29.Rent arrears accrued during the tenancy are £9528.23 and this sum is lawfully due to the Applicant by the Respondents.

30.The Respondents failed to take reasonable care at the property during the tenancy and failed to keep the property in good clean tenable order during the tenancy and

are responsible for loss, damage and repairs required at the property. as a result of their breaches of clauses 17 and 25 of the Private residential tenancy agreement.

31. The Applicant required to replace the carpets at the property due to the condition they were left in after the tenancy, in particular they were stained and soiled with animal urine and waste, and these were replaced and fitted at a cost of £2062.

32. The kitchen units at the property were painted without permission during the tenancy and doors were removed leaving hinges loose and ill-fitting doors, covered with poorly applied paint. These could not be repaired, and the Applicant required to replace the kitchen with second hand units which required to be installed by a joiner.

33. The replacement second hand kitchen units cost £800 and the joinery cost for the replacement kitchen is £753 which sum contains a deduction for the fitting of a replacement granite worktop which is not included in the sums found to be due.

34. Some rewiring was required in the kitchen at the property along with replacement of broken switches and sockets and as a result of the requirement to replace the kitchen units and a new sink waste unit and night latch were required together with some plywood. These costs amounted to £525.80.

35. The replacement kitchen required plumbing work to be carried out including refitting of radiators which was done at a cost of £360.

36. Interior walls at the property had holes in them and paint missing after the tenancy had ended and the Applicant required to have the holes filled and walls repainted throughout the property and woodwork painted or varnished which was done at a cost of £2635.24.

37. The laminate flooring at the property which was soiled through the joints with animal urine was removed and replaced at a cost of £535.85.

38. Mr Gardiner on behalf of the Applicant spent 36 hours clearing rubbish at the property and the outhouse there, removing the damaged kitchen, removing old furniture left behind, removing all the carpets and flooring at the property, and scrubbing the floorboards in the whole house three times with white vinegar to remove the smell of animal soiling and charged £20 per hour for this cost together with £15 for cleaning products giving a total cost for cleaning and clearing the property of £735.

39. The costs to repair the damages and effect required repairs due to the Respondents not taking reasonable care at the property and failing to leave the property in a tenantable condition amount to £ 8406.89 which sums have been paid by the Applicant.

40. The total sum due by the Respondents to the Applicant in terms of accrued rent arrears and costs for loss damage and repair at the property as a result of the Respondents breaching the tenancy agreement after deduction of the deposit paid amounts to £17585.12.

41.The sum of £17585.12 is lawfully due by the Respondents to the Applicant.

### **Reasons for Decision**

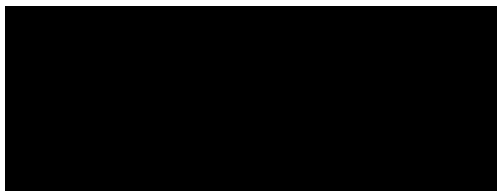
42.The Tribunal was satisfied that rent arrears had accrued at the property over most of the tenancy and had not been paid despite opportunities being given by the landlord. The property had been left in a mess and the Tribunal was satisfied that the Respondents had breached the tenancy agreement and it was necessary for the Applicant to repair and replace the kitchen which carried associated costs , to replace all floorcoverings and repair walls, woodwork together with a need for extensive cleaning and the clearing out of items left at the property and rubbish. The Tribunal did not allow a claim for a replacement granite worktop in the kitchen as there was no evidence presented as to why this was necessary and the sum of £75 was deducted from the kitchen joinery costs to take account of this deduction. The costs claimed appeared reasonable. This was a private residential tenancy in the name of both Respondents, and this carries joint and several liability when tenancy obligations are breached. The Tribunal was satisfied that that the Applicant had mitigated their losses where possible and that the order was necessary.

### **Decision**

The Tribunal determined that a payment order in the sum of seventeen thousand five hundred and eighty-five pounds and twelve pence only (£17585.12) be granted in favour of the Applicant and against the Respondents.

### **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/Chair**

**3.3.23**  
**Date**