



**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) 2016**

**Chamber Ref: FTS/HPC/CV/23/1565**

**Re: Property at Flat 5/3, 15 Kent Road, Glasgow, G3 7AF (“the Property”)**

**Parties:**

**Kelvin River Property Estates Ltd, 6th Floor Gordon Chamber, 90 Mitchell Street, Glasgow, G1 3NQ (“the Applicant”)**

**Ms Claire (Clara) Cullen, 1/1 4 Auchenback Court, Newton Avenue, Barrhead, Glasgow, G78 2JF (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that it should make an order for payment for the sum of THREE THOUSAND AND FIFTY FIVE POUNDS AND NINETY PENCE (£3,055.90) STERLING**

**Background**

1. An application had been received under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking a payment order against the Respondent.
2. The application contained:-
  - a. a copy of the tenancy agreement;
  - b. a copy of the rent statement; and
  - c. a copy of adjudication decision by Safe Deposits Scotland

3. The Applicant's agent, Mr Gibb from Tay Letting Ltd appeared at the case management discussion on 24 July 2023. There was no appearance by the Respondent. Service on the Respondent had been by sheriff officer. As I was satisfied that service had taken place by advertisement I was prepared to proceed in her absence.
4. The Respondent had made written submissions on 18 June 2023 and 29 June 2023. In addition, the Applicant had made submission in response to the written submission on 19 June 2023.

### Discussion

5. The Applicant's agent asked the tribunal to grant the order for payment for £3,055.90.
6. There was submitted a tenancy agreement and rent statement in support of the application.
7. In relation to the written submission by the respondent, it had indicated that rent should not be due because there was issues with damp in the property and they had not been resolved.
8. The applicant's agent advised that there had been two separate leaks in the property, but neither led to a right to withhold rent in his opinion. The first was a faulty towel rail leak reported on September 2021; and the second leak was around the toilet reported on August 2022. He advised that the landlord did not dispute the leaks and some staining on the wall. However, the tenant's response was disproportionate to the issue. The tenant was very difficult about the contractors getting into the fix the leaks. She had refused the contractors entry. She also started complaining about another landlord who used Tayside Letting referring to another property, she had done so on social media. The complaint about the other property had nothing to do with her situation.
9. Further, he advised that if the tenant had been concerned about the condition of the property, the letting agents have a system for investigating complaints, and seeking to resolve the issue. She should have pursued redress through the letting agents. The letting agent would have investigated the matter and given her advice about going to the local authority or the Housing and Property Chamber if she considered that there was a breach of the repairing standard. She did not pursue the matter through that avenue.
10. The sum sought was for two and half months' rent or the period November 2022, December 2022 and half of January 2023. The tribunal asked when she had left the property, the letting agent advised it was 12 January 2023. They believed that she may not have been residing in the property from sometime in December 2022, however they also believed that she was still using the property for business purposes, and she had not handed the keys back to the

letting agent. The letting agent had encouraged to hand the keys back and thereby reduce further rent arrears accruing however it was not until 12 January 2023 that she advised the letting agents that she had left the keys at the property.

11. The letting agent advised that the deposit had been retained due to the condition of the property, there had been an adjudication with Safe Deposits Scotland. They had found that the landlord could retain all of the deposit. The tribunal queried whether the costs for carpets and redecoration were appropriate to retain as the landlord had served a notice to leave on the basis that they would carry out renovation works. The letting agents advised that the landlord owned the whole block, they were doing works to the building as they had received other complaints about water ingress at the block. He advised that the walls in the property had been painted black and the carpets had been sprayed with some sticky substance which appeared to be chocolate sauce or syrup. The landlord would have re-laid the carpets but could not do so due to the condition.
12. Accordingly, the landlord sought a payment order for the outstanding rent for the final two and a half months.

### Findings in Fact

13. The Tribunal found the following facts established:-
  - a. There existed a private residential tenancy between the Applicant and the Respondent.
  - b. The tenant was Claire (or Clara) Cullen.
  - c. The landlord was Kelvin River (Mitchell Apartments) Ltd.
  - d. The tenancy was for the property 15 Kent Road (5/3), Glasgow, G3 7BY.
  - e. It had commenced on 2 February 2021.
  - f. Clause 8 of the Tenancy Agreement provides that the rent for the property is £1,250 per calendar month.
  - g. There were rent arrears outstanding which totalled at least £3,055.90 as at today's date.
  - h. Rent had not been paid for the months of November and December 2022 and the first half of January 2023.
  - i. The respondent had vacated the property on 12 January 2023.

## Reasons for Decision

14. Section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 provides that the First Tier Tribunal has jurisdiction in relation to civil proceedings arising from private rented tenancies. As this tenancy is a private rented tenancy I am content that I have jurisdiction to deal with this case.
15. The tenancy agreement created obligations between the parties, which included paying rent. The respondent had failed to make payment of the rent. There was submitted a rental statement showing the arrears due.
16. The respondent had left the property on 12 January 2023 without repaying the rent arrears. No rent arrears had been repaid to date and they remain due.
17. The landlord had retained the deposit for damages to the property. The tenant had not appeared at the case management discussion but had submitted information about leaks to the property and due to the leaks she should not have to pay the rent due. The letting agent advised that there had been two leaks, but the tenant would not allow contractors into fix the leaks, she had been disruptive and difficult. Further the tenant had not sought assistance from the local authority or the Housing and Property Chamber if she considered that there had been a breach of the repairing standard. The letting agent considered that withholding two and a half months rent was disproportionate to the two leaks. Given that the respondent did not appear at the case management discussion; and there was no evidence to support her position that she was entitled to withhold two and a half months rent for the two leaks at the property; and considering the explanation given by the letting agent particularly that the respondent would not allow contractors entry to fix the leaks, then I am prepared to find that the rent was due, and there appeared no reason to refuse to grant the order in full.
18. On the basis of the evidence submitted and having regard to all papers submitted with the application and the oral submission by the Agent, I consider that I should make an order for the sum sued.

## Decision

19. I grant an order in favour of the Applicant for THREE THOUSAND AND FIFTY FIVE POUNDS AND NINETY PENCE (£3,055.90) STERLING against the Respondent.

## **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.**

**Melanie Barbour**

**Legal Member/Chair:**

**Date: 24<sup>th</sup> July 2023**