



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)
Act 2014**

Chamber Ref: FTS/HPC/CV/21/3107

Re: Property at 28B Crown Street, Aberdeen, AB11 6AY (“the Property”)

Parties:

**Miss Karen Dinardo, Mr Mark Dinardo, Dr Lorraine Dinardo, all Mirren Court One,
119 Renfrew Road, Paisley, PA3 4EA (“the Applicants”)**

**Mr Geoffrey Scott Kyle, Mrs Christina Elisabeth Kyle, Mr Brandon William
Tyrone Kyle, all 24a Alexander Terrace, Aberdeen, AB24 2RE (“the
Respondents”)**

Tribunal Members:

George Clark (Legal Member) and Mary Lyden (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be granted and made an Order
for Payment by the Respondents to the Applicants of the sum of £3,648.95.**

Background

By application, received by the Tribunal on 15 December 2021, the Applicants sought an Order for Payment in respect of unpaid rent that had become lawfully due by the Respondents to the Applicants. The sum sought was £1,698.40.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties commencing on 14 January 2020 at a rent of £725 per month, a Rent Statement showing arrears at 14 December 2021 of £7,975 and details of three previous Orders for Payment against the Respondents for unpaid rent due to the Applicants. When the sums covered by these previous Orders were deducted, the balance was £1,698.40. The Applicants later sought leave to amend the sum sought to £3,648.95 and provided an updated Rent Statement showing arrears at 14 March 2022 of £9,925.55, with no rent at all having been paid since 12 March 2021.

Following a Case Management Discussion held on 16 March 2022, at which the Respondents denied the sums sought were due and stated that the condition of the Property or items supplied within it were defective, supporting non-payment in full or part, the Tribunal decided to hold a full Hearing on the application and issued a Direction to the Respondents to provide a written outline of their answers to the application, to include details of any disrepair of the Property or any faulty items supplied with the tenancy that are relevant to the application. The Tribunal also Directed the Applicants to provide a written outline of their position, in response to the Respondents' claims, and a final rent schedule, to include any new payments made by the Respondents towards unpaid rent.

On 2 April 2022, the Respondents in an email listed the items found not to be working when they moved into the Property and stated that the door bell entry system was still not working, the boiler was not working very well, the oven was a poor replacement for the original one, the microwave was not working, the security phone was still not working and the kitchen fan and shower were not working. They also provided a copy of an email to the Applicants, dated 2 February 2020, which incorporated the Applicants' responses of 4 April 2020 to that email.

The Respondents were evicted from the Property on 4 April 2022.

On 6 April 2022, the Applicants responded to the Respondents' email of 2 April. They stated that the issues complained of by the Respondents had been during the period that they were still paying the rent in full. It was after that period that they had stopped paying rent. No communications in respect of complaints had been received from the Respondents beyond mid-October 2021, the date from which the arrears covered by the present application commenced. The Applicants also provided an updated Rent Statement showing arrears at 14 March 2022 of £9,925.55, with nothing at all paid since 12 March 2021.

The Hearing

A Hearing was held by means of a telephone conference call on the morning of 7 September 2022. It had been scheduled for 5 May 2022, but one of the Respondents, Mr Geoffrey Kyle, had telephoned the Tribunal on the morning of the hearing and requested a postponement. He advised that his son had been taken to hospital the night before.

The Applicant, Mr Mark Dinardo was present, as were all three Respondents.

The Respondent. Mr Brandon Kyle told the Tribunal that they were not now arguing that they had a right to withhold rent or a right to a rent reduction. The reasons for non-payment had been financial. All three Respondents are disabled, but the Respondent, Mr Geoffrey Kyle, had had his benefits reduced, the mobility element of his Disability Living Allowance having been removed on the transfer to Universal Credit. Mr Brandon Kyle had also had a pacemaker fitted in mid-2020. At this point, they had still been paying the rent. Summarising, Mr Brandon Kyle confirmed that the Respondents had been unable to pay the rent. He contended that they had tried to make part-payments. He also referred to a flood in the basement which had damaged the Respondents' belongings.

The Applicant, Mr Mark Dinardo, stated that he would never have refused a payment, however small, but nothing at all had been paid in the final 13 months of the tenancy. He argued that the Respondents had simply chosen not to pay any rent. In relation to the flood, he stated that there were caged areas in the basement, allocated to each flat for storage, and there had been a leak from a communal rainwater pipe. If the

Respondents had suffered any loss, they could, presumably, have made a claim on their contents insurance.

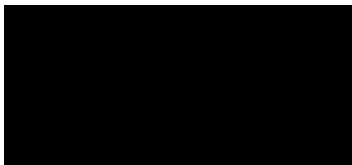
Questioned by the Tribunal, the Respondent Mr Brandon Kyle confirmed that the Respondents had never been in receipt of Housing Benefit. They were appealing the reduction in benefits. The Applicant, Mr Mark Dinardo told the Tribunal that their letting agents had carried out normal financial checks on the Respondents and that he understood the total benefits for the Respondents had been £1,470 per month, so it appeared that they had simply decided to stop paying rent.

Reasons for Decision

The Tribunal noted that the defence alluded to at the Case Management Discussion had related primarily to the condition of the Property, but that the Respondents were now saying that the reasons for non-payment were purely financial. They appeared to be no longer disputing the claim that the sum sought was due. Accordingly, the Tribunal decided that the amended sum sought, namely £3,648.95 had become lawfully due by the Respondents to the Applicants and made an Order for Payment by the Respondents to the Applicants of £3,648.95.

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

7 September 2022
Date