



**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/18/0981

Re: Property at 67 Church Street, Dundee, DD3 7HP (“the Property”)

Parties:

The BRL 1995 Discretionary Trust, East Kingsway Business Centre, Mid-Craigie Trading Estate, Mid-Craigie Road, Dundee, DD4 7RH (“the Applicant”)

Mr Michael Weymss, 13D Finlow Terrace, Dundee, DD4 9ND (“the Respondent”)

Tribunal Members:

Petra Hennig-McFatridge (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £1,669.60 in relation to rent arrears, cleaning cost and cost of removal of items should be granted

Procedural Background:

The Applicant is seeking an order for payment of rent arrears and other related costs for the property. An application in terms of Rule 70 (Civil Proceedings) was lodged on 24 April 2018 and the sum outstanding stated as £1,740.00 rent arrears, based on a monthly rent of £360 for a Short Assured Tenancy starting 29 April 2015 to the end of the tenancy on 6 December 2017, cleaning costs of £105.60 and removal costs of 284.00 for items left in the property after the end of the tenancy.

The Applicant lodged the Short Assured Tenancy Agreement dated 29 April 2015 with signed Schedule, Notice to Quit dated 17 February 2017, S33 Notice dated 17 February 2017, Tenant Account Summary to 28 November 2017 showing rent arrears of £1,740.00, Safety Deposit Scotland email of 6 February 2018, Invoice CCS Cleaning Services 19 January 2018 for £105.60, Document headed December

2017 B.R.L. 1995 Discretionary Trust from R.A.L. showing cost of removal of items for the property at £284, Extract Decree for recovery of possession of the property from Dundee Sheriff Court dated 6 December 2017, Refund of Deposit copy with calculation of outstanding amount and Inventory Checkout Report from Lickley Prockter Lettings dated 12 December 2017. The claim to the tribunal included an unspecified claim for expenses and a claim for interest at the rate of 8% from the last date of service.

The Tribunal first fixed a Case Management Discussion for 17 October 2018 at which Ms Ginniver, the Applicants' Representative attended.

The Respondent did not attend.

The note of the Legal Member dated 12 October 2018 and the note dated 17 October 2018 fixing a date for a further CMD on 7 November 2018 are referred to for their terms and held to be incorporated herein.

Sheriff Officers served a letter from the Tribunal dated 18 October 2018 containing the notification of the CMD for today's date, the notes referred to above and guidance that any representations had to be received by 2 November 2018 and that the Tribunal may make a decision at the CMD on the Respondent on 19 October 2018 and the required notice in terms of rule 17 of the rules of procedure (the rules) had been given.

At the CMD on 7 November 2018 Ms Leckie from Bruce Short Solicitors attended on behalf of the Applicants. The Respondent did not attend.

Submissions at the Case Management Discussion:

Ms Leckie explained that the Applicant was no longer seeking expenses or interest in the matter. She further explained that the document initially queried at the previous CMD had the signature of the managing agent for the Applicant, Ms Linton, on it and that the content of the document headed "report allowed for fair wear and tear" related to the inspection of the property on 12 December 2018 and the letters next to the entries refer to the agencies then instructed to carry out the work required. She referred me to items 9g, 11 and 24 of the Tenancy agreement, which deal with the condition of the property and costs that can be recovered from the tenant on leaving the property. These are referred to for their terms and held to be incorporated herein.

The tenancy agreement set out that the rent was initially £340 per months, which had been increased to £360 per month after 27 June 2015 (clause 3) and the rent arrears were shown as per the schedule.

She further advised that the Safety Deposit Scotland process had been completed and on the basis of the documents lodged by the landlord the deposit of £460 had been returned to the landlord in full, which had been taken into consideration for the calculation of the sum outstanding.

She offered further to lodge an affidavit of the Applicant's agent, which was refused as late.

The Respondents had not lodged a defence to the application.

The statements set out in the application and the calculation of the sum outstanding were not disputed.

Findings in Fact:

- 1. The Applicants and the Respondents entered into a Short Assured Tenancy on 29 April 2015. The Respondent moved out on 6 December 2018.**
- 2. In terms of the Agreement rent of £360 is due in advance of each rent payment date (Clause 3).**
- 3. The amount of arrears as at the end of the tenancy was £1,740.00 as shown in the schedule.**
- 4. Clause 4.1 sets out the deposit for the tenancy at £460, which had been repaid in full to the landlord on 10 February 2018 by Safety Deposit Scotland and Clauses 4.1 and 9 g of the tenancy agreement allows use of the deposit amount against any rent arrears and cleaning costs or maintenance costs.**
- 5. The Applicant set off the deposit against the arrears and related costs, reducing these by the amount of £460.**
- 6. The outcome of the final inspection on 12 December 2018 was that cleaning and removal of items was required.**
- 7. The cleaning costs for the property were £105.60 as per the CCS invoice.**
- 8. The costs for emptying the property after the tenant had left were £284 as per the R.A.L. invoice.**

Reasons for the Decision:

The Tribunal make the decision on the basis of the written evidence lodged by the Applicant and the information given at the hearing by the Applicant's representative on their behalf.

There were no representations by the Respondent and thus there is no dispute about the facts of the case.

The rent outstanding as of the date of the Case Management Discussion based on the amounts paid as per the schedule lodged and the rent charge of £360 per

calendar month and the information from the Applicant's representative at the hearing is £1,740. The final inspection report details the need for cleaning and removing of items from the property. These costs are recoverable from the tenant in terms of the tenancy agreement Clause 11 and Clause 24. The rent arrears and cleaning and clearing costs total £2,129.60. The full deposit refund of £460 was applied to the arrears in terms of Clause 9g of the tenancy agreement and thus the remaining sum is £1,669.60

There was no valid defence to the action. It is not in dispute that the sum of arrears, clearing and cleaning costs were due by the Respondent to the Applicants.

The Applicants are entitled to payment of the sum of £1,669.60.

Decision:

The Tribunal grants an order for payment of the sum of £1,669.60.

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.

Petra Hennig McFatrige

Legal Member/Chair

7 November 2018

Date