

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

---



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/CV/21/2701**

**Re: Property at THE CHAUMER, NORTH MILLBREX, FYVIE, TURRIFF,  
ABERDEENSHIRE, AB53 8NX (“the Property”)**

**Parties:**

**Mr Alan Stewart, Mrs Alison Stewart, THE STEADING, NORTH MILLBREX,  
FYVIE, TURRIFF, AB53 8NX (“the Applicant”)**

**Mr Andrew McLean, Miss Lois Long, 41 Edmondside, Pitmedden, AB41 7GP;  
41 Edmondside, FYVIE, Pitmedden, AB41 7GP (“the Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined as follows:-**

**BACKGROUND**

1. By Lease dated October 2020 (the exact date not being included within the lease) the Applicants Let the property to the Respondents;
2. The start date of the tenancy was 27<sup>th</sup> October 2020;
3. The tenancy came to an end on 29<sup>th</sup> October 2021. As at that date rent arrears existed in the amount of £1,323.97;
4. A Tenancy Deposit had been paid. The Applicants recovered sums from the Tenancy Deposit Scheme, £81.60 of which was allocated to arrears of rent, thereby reducing the arrears of rent to £1,242.37;

5. A “Good Lord Rent Protection and Legal Expenses Certificate of Insurance” (the “Good Lord policy”) existed in relation to the tenancy with a view to said policy being used by the Applicants to recover unpaid rent. The Applicants received £1,323.97 following a claim being made against the Good Lord policy;
6. The Tenancy agreement provided, at Clause 9, that in the event of rental payments being made late, interest was payable at the rate of 4% over the Royal Bank of Scotland base rate in relation to said late payments. The Application to the Tribunal seeking an Order for payment, however, sought interest at the rate of 8% per annum in relation to any payment order granted;
7. A Case Management Discussion was held on 25<sup>th</sup> April 2022. The Case Management Discussion was continued as the Tribunal wished to be addressed further in relation to the Applicants’ right to pursue this action in circumstances where they now had no loss, the insurers having fully indemnified them in relation to the rent arrears;

## **THE CASE MANAGEMENT DISCUSSION**

8. The Applicants were represented by Mr F Napier of Jackson Boyd Solicitors. The Respondents did not participate. The Tribunal, however, was satisfied the Respondents had received timeous intimation of the Case Management Discussion on 25<sup>th</sup> April 2022 and the continuation thereof and determined it to be appropriate to continue in the absence of the Respondents;
9. Mr Napier had lodged written submissions in relation to the right of the Applicants to pursue the rent arrears. The Tribunal still had concerns, however, as the Respondents, having been indemnified by the insurers, had no loss to recover;
10. While discussing this issue, and the subrogated rights of the insurer, Mr Napier advised that he was, in fact, acting for the insurers and exercising their subrogated right of recovery from the Respondents. When doing so, proceedings are raised in the name of the insured party – in this case the Applicants – but the proceedings were instructed by the insurers, DAS. While it is unfortunate that had not been made clear in the original application, that being so, the Tribunal accepted that it was competent for the insurers to seek recovery of rent arrears from the Respondents and that it was proper that the proceedings were in the name of the Applicants;
11. That having been determined, Mr Napier sought an order for payment in the sum of £1,242.37, that being the amount of arrears due by the Respondents, that figure taking in to account a sum of money recovered from the tenancy deposit which was applied to the arresr to reduce the outstanding amount to £1,242.37. A rent statement had previously been submitted. The Tribunal was willing to grant an order for payment in that amount;
12. In relation to interest on the amount ordered, the application to the Tribunal sought interest at 8% per annum. The lease, however, provided for interest at 4% above Royal Bank of Scotland base rate. A discussion took place in relation to the matter of interest. The lease regulates the payment of rent and interest as between the Applicants and the Respondents. Interest is due on

late payments until paid. The Applicants, however, have been paid, albeit by the insurers. The obligation on the Respondents to pay interest was extinguished when the Applicants received payment from the insurers. Mr Napier, in the circumstances, and taking a pragmatic approach to the matter, indicated that he would be content with an order for payment of the sum of £1,242.37 without any provision for interest thereon;

## **FINDINGS IN FACT**

13. The Tribunal found the following facts to be established:-

- a) By Lease dated October 2020 (the exact date not being included within the lease) the Applicants Let the property to the Respondents;
- b) The start date of the tenancy was 27<sup>th</sup> October 2020;
- c) The tenancy came to an end on 29<sup>th</sup> October 2021. As at that date rent arrears existed in the amount of £1,323.97;
- d) A Tenancy Deposit had been paid. The Applicants recovered sums from the Tenancy Deposit Scheme, £81.60 of which was allocated to arrears of rent, thereby reducing the arrears of rent to £1,242.37;
- e) The Applicants have previously received payment from DAS insurers in relation to the rent arrears;
- f) DAS as insurers who have indemnified the Applicants have a subrogated right to seek an order for payment against the Respondents;
- g) The sum of £1,242.37 is due, resting and owing by the Respondents to the insurers;

## **DECISION**

The Tribunal grants an order against the Respondents for payment of the sum of ONE THOUSAND TWO HUNDRED AND FORTY TWO POUNDS AND THIRTY SEVEN PENCE (£1,242.37) STERLING to the Applicants

## **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.**

Virgil Crawford

---

**Legal Member/Chair**

**17 June 2022**

---

**Date**