



**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/21/1164**

**Re: Property at 16 Polton Road West, Lasswade, EH18 1BZ (“the Property”)**

**Parties:**

**Ms Fiona McArthur, 79 Tenison Road, Cambridge, CB1 2DG (“the Applicant”)**

**Mr Neill Somerville, Ms Vicky Whigham, UNKNOWN, UNKNOWN, UNKNOWN, UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Andrew McLaughlin (Legal Member) and Frances Wood (Ordinary Member)**

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

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

**Background**

The Applicant seeks a Payment Order against the Respondents in the sum of £8,013.29 said to be due to the Applicant as unpaid rent arrears. The Application is accompanied by rent statements and also email correspondence exchanged between the parties. The tenancy agreement itself is also produced.

**The Case Management Discussion**

The Application called for a Case Management Discussion by conference call at 10 am on 29 July 2021. The Applicant was present on the call alongside a Mr Neil Toolin who was simply observing. There was no appearance by or on behalf of the Respondents.

The Application and information about how to join the conference call for today's Tribunal had been served on the Respondents by Sheriff Officers on 24 June 2021. In light of this, the Tribunal decided to proceed in the absence of the Respondents.

The Tribunal heard directly from the Applicant and questioned her carefully on the issues set out in the Application.

In the emails exchanged between the parties, the Respondents had latterly made reference to a possible argument about an abatement of rent and so the Tribunal discussed this with the Applicant to consider if this could justifiably amount to a potential defence to the Application.

The emails had made reference to the Respondents being unsatisfied with the work required to maintain the garden and also made reference to the doors and the Property generally not being heat efficient.

The Applicant had lodged a further up to date rent statement showing that the sum of £9,713.29 was now due as rent arrears. The Application though had not been formally amended to seek that increased sum and this had not been intimated to the Respondents. The Tribunal therefore did not consider it fair to allow a sum greater than that precisely stated in the Application to be considered.

Having heard from the Applicant and having considered the documentation, the Tribunal made the following findings in fact.

### **Findings in Fact**

- I. *The Parties entered into a tenancy in respect of the Property which commenced on 1 August 2019;*
- II. *The Applicant was the landlord and the Respondents were the tenants;*
- III. *The contractual monthly rent due was £850.00;*
- IV. *The Respondents fell into rent arrears;*
- V. *The Respondents ceased making any monthly payments whatsoever in October 2020;*

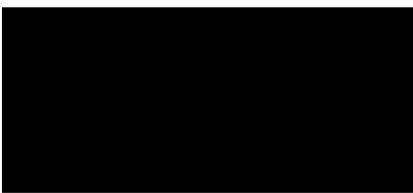
- VI. *At the time of the lodging of the Application, the sum of £8,013.29 was lawfully due as rent by the Respondents to the Applicant but remained unpaid;*
- VII. *Around the time the Respondents stopped paying rent they began complaining to the Applicant about the effort required to maintain the garden and the heat efficiencies of the doors, windows and the house generally;*
- VIII. *There is no case made out in this correspondence such as would allow the Tribunal to consider that the Respondents were entitled to withhold rent under the principle of rent abatement.*

### **Reasons for Decision**

Having made the above findings in fact, the Tribunal decided to grant the Application making a Payment Order in the sum of £8,013.29 together with an award of interest that will run on that sum at the rate of 3 per cent from today's date until payment.

### **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.**



30<sup>th</sup> July 2021

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**Legal Member/Chair**

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**Date**