



**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) Act 2016**

**Chamber Ref: FTS/HPC/CV/19/2645**

**Re: Property at 75 Munro Avenue, Kilmarnock, KA1 2NA (“the Property”)**

**Parties:**

**Ms Jennifer Smith, Nord Andlie International School Manila, Bradco Avenue Aseana Business Park, Pananaque City, Metro Manila, 1700, Philippines (“the Applicant”)**

**Mr George Spence, formerly of 75 Munro Avenue, Kilmarnock and whose present whereabouts are unknown (“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**

**Background**

1. An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 111 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment of the sum of £1,104.60 to the Applicant in relation to rent arrears due by the Respondent and damage to the property.
2. The application contained:-
  - a copy of the tenancy agreement;
  - rental statement;
  - final inventory
  - inventory
  - outstanding invoice for gardening

- outstanding invoice for cleaning
  - outstanding invoice for decoration
3. The Applicants' agent Laurie Weir from Messrs Murphy Scoular, appeared on behalf of the Applicant. There was no appearance by the Respondent.
  4. Notice of the Hearing had been served on the Respondent by advertisement between 22 November 2019 and 6 January 2020. As I was satisfied that service by advertisement had been carried out, I was prepared to proceed with today's hearing in his absence.
  5. The Applicants' agent lodged photographs of the garden area and a further note regarding rent and invoices paid.

#### Hearing

6. The Applicants' agent referred me to the papers which had been lodged in support of the application, including the tenancy agreement, rent account statement and invoices. She confirmed that this application related to unpaid rent due in terms of that agreement. The Respondent had lost his job and fallen behind with this rent and had failed to pay the final month's rent and had only paid £75 of January 2019's rent.
7. She advised that the Respondent was aware of the rent arrears. The letting agents had made attempts to get him to pay the arrears however they had absconded before paying the rent.
8. The Applicant's agent advised that it was the tenant, his partner and a new baby who had lived in the property. It had been newly decorated when they had gained entry and when they left it was in poor condition. The condition was more than fair wear and tear.
9. She submitted photographs of the garden area, showing the weeds, she advised that clause 30 of the tenancy agreement entitled the landlord to claim for the gardening which needed to be done.
10. She said the property was dirty and grubby when they took entry. There was excessive marking on a number of walls, handprints, or where furniture had been moved against it. She also advised that flooring had also been damaged. She submitted that clauses 17, 21 and 25 entitled her client to claim for the redecoration and cleaning costs.
11. She advised that they had recovered the deposit of £475. She advised that they had decided costs for it for new kitchen lino and bin cleaning. These costs totalled £146. She advised that she was seeking a reduced sum today.

costs totalled £146. She advised that she was seeking a reduced sum today. She would seek to deduct the balance of the deposit of £329 and this would mean that the total outstanding to the landlord was £775.60. She sought an order for payment of this sum.

### Findings in Fact

12. The Tribunal found the following facts to be established:
13. A tenancy agreement was entered into between the Applicant and the Respondent for the property and existed between the parties. It was entered into on 16 November 2018.
14. Clause 8 in the tenancy agreement provided that monthly rent was £475 and was payable each month in advance.
15. That the rental statement showed amounts due each month, amounts received, and rent outstanding.
16. That the rental statement showed total rent arrears outstanding as at 8 April 2019 being £749.60.
17. That it appeared that there had been no payments towards the rent arrears other than those shown on the rent statement.
18. Clause 17 in the tenancy agreement provided that the tenant was required to take reasonable care of the property including keeping it clean and tidy; clause 25 dealt with contents and condition and the tenant agreed to repair and replace damaged contents; and clause 30 provided that the tenant would maintain the garden in a reasonable manner.
19. That invoices were lodged in support of redecoration, cleaning and gardening.
20. That it appeared that the property required to be redecorated cleaned and the garden cleared at the end of the tenancy.

### Reasons for Decision

21. 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 residential tenancies.
22. As this tenancy is a private residential tenancy I am content that I have jurisdiction to deal with this case.
23. There was no response or appearance from the Respondent but he had been notified of today's hearing.

24. The tenancy agreement created obligations between the parties, one of those obligations was to pay rent, and the Respondent has failed to do so. There was submitted a rental statement showing the arrears due and additional information provided today by the Applicant's agent was that there had been no further payments towards the rent arrears and this was therefore the sum still outstanding. There were also obligations to maintain the property and garden ground in a reasonable state of repair. It appeared that the tenant had failed to do so and the damage and was in excess of what would be deemed to be fair wear and tear. I noted that the deposit had been recovered and subject to two further invoices being deducting for additional works, the sums sought was reduced by the monies recovered under the deposit.

25. On the basis of the evidence submitted and having regard to all papers submitted including the application, I consider that I should make an order for the amended sum sued for.

### Decision

I grant an order in favour of the Applicant for SEVEN HUNDRED AND SEVENTY FIVE POUNDS SIXTY PENCE (£775.60) 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**

6. 1. 2020

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**Legal Member/Chair**

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**Date**