



**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/19/2788**

**Re: Property at 37 Liddle Drive, Bo'ness, EH51 0PA (“the Property”)**

**Parties:**

**Mr Stuart Simpson, 37 Liddle Drive, Bo'ness, EH51 0PA (“the Applicant”)**

**Mrs Janet Sharp, 40 Lomond Drive, Falkirk, FK2 7UH (“the Respondent”)**

**Tribunal Members:**

**Maurice O’Carroll (Legal Member) and Frances Wood (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant should be granted a payment Order in the sum of one thousand three hundred and seventeen pounds Sterling and thirty nine pence (£1,317.39)**

**Background**

1. This dispute previously came before the Tribunal on 24 January 2020 at a Case Management Discussion (“CMD”), following which a Note of the CMD was produced. The Tribunal set out the positions of both of the parties and the witnesses which each of them wished to call at a hearing to be set down.
2. A full hearing was set down for 10 March 2020 and was heard within George House, George Street, Edinburgh at 10am. Both parties appeared on their own behalf and were not legally represented.

**The hearing**

3. Prior to hearing any evidence, the Tribunal set out the issues which were to be resolved before it. After some discussion, it was agreed that neither party

required to call any witnesses in addition to themselves in order to provide evidence to the Tribunal which would assist it in determining the issues which were properly before it.

4. The parties were able to agree that the facts as set out at paragraph 9 of the Notes of the CMD dated 24 January 2020 were accepted. It was also accepted that the Applicant's claim, at its highest, was as set out in the table in paragraph 11(ii) of the Note.
5. The only points that were in dispute were (i) the date of the termination of the lease between the parties and (ii) the extent to which any additional expenses on top of the rent arrears arose as a result of the lease and were therefore payable to the Applicant by the Respondent.
6. It was agreed that the lease commenced on 24 October 2017 and the rent payable was £480 per calendar month in advance. It was also agreed at the hearing that no deposit was paid by the Respondent to the Applicant at the start of the lease or at any time thereafter.
7. Following an incident between the parties, the police were called to the Property on 4 March 2018. The Respondent stated that the police advised her that it was not safe for her to remain at the Property on that date. The Respondent removed herself from the Property at that time but still had access to it until the end date stipulated on the Notice to Quit referred to below.
8. A Notice to Quit dated 17 March 2018 was served on the Respondent by the Applicant following legal advice having been obtained from the Citizens' Advice Bureau. The Notice to Quit was served on the Respondent by Sheriff Officers. Sheriff Officers had been employed by the Applicant prior to that date to trace the Respondent as he was unable to contact her by telephone or text message. The date for removal stipulated in the Notice to Quit was 28 May 2018. Both parties agreed that the lease was legally at an end on that date.
9. Regarding the end date, it was the Respondent's position that the lease ended on 28 May 2018 consistent with the agreement referred to above, although she had ceased to live there from 28 February 2018. She accepted that there was a shortfall in rent for the month of March and that nothing was paid by way of rent during April and May 2018.
10. The Respondent had attended at the Property on 28 May to remove all of her personal possessions. She had expected the Applicant to have been there in order to retrieve his keys to the Property, but he did not attend. She did not, however, inform him that she was removing her belongings on that date as her telephone had been broken and she had no way to contact the Applicant.
11. The keys to the Property were returned to the Applicant by means of the Respondent's brother placing them through the letter box of the Applicant's home on or about 14 June 2018. The Applicant maintained that this meant that the lease in fact ended on 14 June 2018. The dates arising between 28 May and 14

June 2018 were not explored in detail but the assertion would appear to have been that there was some type of informal tenancy in place until such time as the keys to the Property were returned to him. The Applicant accepted that as of 28 May 2018, he would have been entitled to have forced entry to the Property with the assistance of a locksmith and to have changed the locks from that date, although he had not been specifically informed of that at the time by anyone.

12. The Tribunal issued a Direction dated 19 November 2019 seeking information regarding any deposit paid and damage caused to items within the Property. The Applicant provided photographs from within the Property but no receipts vouching expenditure for any replacement items within the Property which had been required due to damage. The issue regarding the deposit was resolved at the hearing.
13. The Applicant provided a single hand written receipt from a gardening services company for £140 dated 21 June 2018. The invoice was in respect of grass cutting, front and back, (which the Applicant confirmed he was liable to carry out) and for removal of items. There was no break-down as to which expenditure had been incurred for each of these services. The Tribunal was unable to ascribe a value to the expenditure incurred for item removal or indeed establish what those items were or who they belonged to. Accordingly, the Tribunal was unable to derive any assistance from the handwritten invoice in making its Order.
14. The Applicant also provided vouching for Sheriff Officer charges in the sum of £30 for the tracing fee and £97.39 (both including VAT) in respect of the service of the Notice to Quit. The Tribunal accepted that both Sheriff Officer expenditures were reasonably and necessarily incurred in the process of bringing the tenancy to an end.

### **Findings in fact**

15. The Tribunal found the following facts to have been proven to its satisfaction:
  - There was an unwritten lease between the parties in respect of the Property which commenced on 24 October 2017
  - The rent payable was £480 per calendar month, payable in advance
  - No deposit was paid in respect of the Property
  - The Respondent paid rent which covered all of the months from October 2017 until February 2018 inclusive
  - During March 2018 only £250 was paid leaving a shortfall of £230 for that month
  - The lease terminated on 28 May 2018 as stipulated in the Notice to Quit served on the Respondent by the Applicant
  - The full amount of rent was therefore due for the months of April and May 2018 but was not paid
  - No vouching was produced in respect of any alleged damage to the Property. Accordingly, this could not form part of the Order for payment.
  - The expenditure in respect of tracing by Sheriff Officer and the service of the Notice to Quit were reasonably and necessarily incurred.

16. Accordingly, the sum due and payable by the Respondent to the Applicant was the remainder of the rent payment due in March, rent for April and May 2018 plus Sheriff Officer fees (£230 + £480 + £480 + £30 + £97.39 = £1,317.39).

### **Reasons for the decision**

17. The Tribunal was greatly assisted by the comprehensive note produced by the Tribunal following the CMD held on 24 January 2020 which allowed the relevant facts to be quickly established.

18. The Tribunal found both the Applicant and the Respondent to be credible and reliable witnesses. The Tribunal was again greatly assisted by the agreement of the parties in relation to important parts of the evidence as noted above.

19. The findings in fact demonstrate that at the end of the tenancy, there was a debt owing to the Applicant by the Respondent in respect of rent arrears and proceedings which necessarily followed the termination of the lease between the parties.

### **Decision**

20. In light of the evidence heard and the findings made by the Tribunal, it decided to make an Order for the payment of the sum of £1,317.39 by the Respondent to the Applicant.

### **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.**

Maurice Ó'Carroll

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Legal Member/Chair

10 March 2020  
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Date