



**Decision 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/19/2826**

**Re: Property at The Ferry House, Camusnagaul, Fort William, PH33 7AJ (“the Property”)**

**Parties:**

**Mr John Fergus Maclean, Failte, Camusnagaul, Fort William, PH33 7AJ (“the Applicant”)**

**Miss Natalie Fogarty, Formerly c/o Lower Spewspout Farm, School Lane, Guide, Blackburn, Lancashire, BB1 2LW but whose current whereabouts are unknown;**

**Mr Christopher Houlihan, c/o Lower Spewspout Farm, School Lane Guide, Blackburn, Lancashire, BB1 2LW**

**(“the Respondents”)**

**Tribunal Members:**

Ms H Forbes, Legal Member

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant in the sum of £4,804.44**

**Background**

This is an application made under Rule 111 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended (“the Rules”). The Applicant is seeking an order for payment in the sum of £4,804.44 in respect of rent arrears and other costs arising out of a tenancy agreement between the parties in respect of the Property. The rent arrears amount to £1,431.23. The other costs relate to cleaning, repairs, gardening, storage/disposal of items, gas, emptying of the septic tank and replacement of items. The total sum allegedly due to

the Applicant is £5,604.44. This is reduced by deduction of a tenancy deposit in the sum of £800. The Applicant included a copy of the tenancy agreement between the parties, a statement of outstanding rent and other costs, invoices, estimates, inventory and condition report, and correspondence between the parties. The Applicant also provided a memory stick with photographs of the Property.

A Case Management Discussion ("CMD") was set down for 20<sup>th</sup> November 2019. Personal service was effected upon the Respondent, Mr Houlihan, on 22<sup>nd</sup> October 2019 by Sheriff Officers. The whereabouts of the Respondent, Ms Fogarty, were unknown.

By email dated 8<sup>th</sup> November 2018, the Respondent, Mr Houlihan, made written representations to the Tribunal. He stated that he would be unable to attend the CMD as he was now living in England.

The CMD set down for 20<sup>th</sup> November 2019 was cancelled due to unsuccessful service on Ms Fogarty.

A further CMD was set down for 18<sup>th</sup> December 2019. Mr Houlihan was notified of the CMD by recorded delivery letter dated 14<sup>th</sup> November 2019.

Service upon the Respondent, Ms Fogarty, of intimation of the CMD was made by advertisement on the website of the First-tier Tribunal for Scotland (Housing and Property Chamber) during the period between 14<sup>th</sup> November and 18<sup>th</sup> December 2019, in terms of Rule 6A.

### **The Case Management Discussion**

A CMD took place by teleconference on 18<sup>th</sup> December 2019. The Applicant attended the CMD by telephone. There was no attendance by the Respondents. The Tribunal was satisfied that both Respondents had been given notice of the CMD and that it was appropriate to continue in terms of Rule 29.

Responding to questions from the Tribunal, in relation to the point raised by Mr Houlihan in his email of 8<sup>th</sup> November 2019, regarding the provision of estimates rather than invoices, the Applicant said that he had provided invoices where work had been carried out. In respect of other work, he was unable to have the work carried out without payment being made first, so he had provided the Tribunal with estimates for that work. The estimates were based on labour and materials from reputable contractors. It was unlikely that the actual costs of work would vary from the estimates.

There was some discussion about Mr Houlihan's point that the damage to the tarmac had been caused by the Applicant's tractor leaking oil. The Applicant said that most of the damage to the tarmac was under the car port, which was not an area that could be accessed by his tractor. In any event, he did not have a tractor for much of the duration of the tenancy and the damage was not attributable to the tractor. The Respondents had 5 or 6 vehicles. There was diesel leaking from a pick-up truck and this damaged the tarmac.

## **Findings in Fact**

1. The parties entered into a tenancy agreement in respect of the Property. The tenancy agreement was dated 19<sup>th</sup> December 2018. The rent was £800 per month.
2. The tenancy ended on or around 22<sup>nd</sup> May 2019.
3. Arrears of rent were outstanding at the end of the tenancy in the sum of £1,431.23.
4. The Applicant is entitled to recover rent lawfully due.
5. At the end of the tenancy, there were costs either incurred or required in relation to cleaning, gardening, repairing, replacement of items and other ancillary matters in the sum of £4,173.21.
6. A deposit of £800 paid by the Respondents was deducted by the Applicant from the sums due.
7. The Respondents are in breach of terms of the tenancy agreement in relation to the condition in which the Property was left at the end of the tenancy.
8. The Applicant is entitled to recover all sums lawfully due.

## **Reasons for Decision**

In terms of the tenancy agreement between the parties, the Respondents were obliged to pay the rent lawfully due. The Respondents failed to pay all rent lawfully due. In terms of the tenancy agreement between the parties, the Respondents were required to take reasonable care of the Property. They have not done so. The Respondents are liable for the cost of repairs where the need for them is attributable to their fault or negligence, or that of any person residing with them. In terms of the tenancy agreement between the parties, the Respondents agreed to replace or repair or pay the cost of repairing damaged, destroyed, removed or lost contents.

The Tribunal noted that Mr Houlihan did not dispute the outstanding rent or the sums due in relation to repairs, replacement, cleaning, gardening etc, as set out in the Application, other than 1) to raise the issue of estimates being provided by the Applicant rather than actual invoices; and 2) the matter of the damage to the tarmac. In relation to the first matter, the Tribunal considered the reasons given by the Applicant for obtaining estimates, and the estimates themselves, and found there was no reason to doubt that the estimates were accurate and a correct reflection of the labour and materials required to carry out the work. In relation to the second matter, in the absence of any rebuttal to the Applicant's position in regard to the tarmac, the Tribunal was satisfied that the sum sought was due.

## Decision

The Tribunal grants an order for payment in favour of the Applicant in the sum of £4,804.44.

## 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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.

Helen Forbes

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Legal Member/Chair

18/12/19

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Date