



**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/23/2224**

**Re: Property at Dormitory Flat, Low Road, Thornton, KY1 4DT (“the Property”)**

**Parties:**

**Mr Jonathan Preece, 27 Robertson Road, Kelloholm, DG4 6QY (“the Applicant”)**

**Mr Mario Caira, Dormitory Flat, Low Road, Thornton, KY1 4DT (“the Respondent”)**

**Tribunal Members:**

**George Clark (Legal Member) and Eileen Shand (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the application should be granted, subject to a reduction in the amount claimed, and made an Order for Payment by the Respondent to the Applicant of the sum of £200.**

**Background**

1. By application, dated 3 July 2023, the Applicant sought an Order for Payment in respect of rent overpaid by him to the Respondent. The sum sought was £2,400.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the parties commencing on 1 May 2023 at a rent of £600 per month, a Receipt dated 1 May 2023 of the Applicant’s tenancy deposit of £600 and £3,600 in advance rent and confirmation from Safe Deposits Scotland that the full deposit had been paid to the Respondent, £100 for cleaning, £100 for damage and £400 for gardening.
3. The Applicant stated that the tenancy had ended on 30 June 2023 and that the Respondent had included £400 for gardening costs in his claim to have

the deposit paid to him, but was now saying that this only covered May 2023 and not also the month of June.

4. On 3 August 2023, the Tribunal advised the Parties of the date and time of a Case Management Discussion and the Respondent was invited to make written representations by 24 August 2023.
5. On 11 August 2023, the Applicant made representations to the Tribunal. He provided copies of an exchange of messages with a gardener, who confirmed on 12 May 2023 that the cost of cutting, strimming and weedkilling would be £60. He also provided a copy of his email of 24 May 2023, giving notice to the Respondent that he would be leaving the Property by the end of June, stating that he would be owed 4 months' rent and providing his bank details.
6. The Respondent's representative provided written representations to the Tribunal of 16 and 21 August 2023. They included WhatsApp messages regarding the Applicant's decision to give notice and leave the Property and an email from Ms Carolann Curran, the Respondent's representative to Fife Council Landlord Registration Department asking whether the Respondent was entitled to keep the balance of rent paid in advance, as an early termination fee, the Applicant having terminated the lease without good reason. The representations relating to the Applicant's reason for giving notice were not considered by the Tribunal, as he had an absolute right to end the tenancy at any time on giving one month's notice.

### **Case Management Discussion**

7. A Case Management Discussion was held by means of a telephone conference call on the morning of 5 September 2023. The Applicant was present and the Respondent was represented by Ms Carolann Curran.
8. Ms Curran advised the Tribunal that the Property is a single storey self-contained dwellinghouse which is attached to a much larger dwelling. There is a connecting door, which is kept locked, between the two. The Property has a large area of garden, extending to approximately one acre, and it had been made clear to the Applicant before he took on the tenancy that the cost of maintaining the garden would be significant. She argued that, whilst the lease itself made no mention of garden ground, it was clearly part of the let subjects and was covered by the general obligation of the Applicant to keep the Property in good repair and condition. He was liable to maintain the garden throughout the period of notice that he gave to terminate the tenancy. He appeared to have vacated the Property in May 2023, but the notice period expired on 30 June. A letter had been put through the letterbox and a copy pinned to the door on 1 June, reminding him that he was still liable for garden maintenance costs until 30 June.
9. The fact that the garden was part of the subjects let was not disputed by the Applicant. His position was that he had vacated the Property on 20 May and had returned only once thereafter, on 25 May. He had posted the keys back to the Respondent on 30 May by Special Next Day Delivery. He had not

received any letter telling him that there would be further sums to be paid for garden maintenance and had assumed that the £400 sought for gardening in the claim against the deposit was the only gardening bill he was expected to pay.

10. It appeared to the Tribunal that establishing a timeline would be important in arriving at a Decision on the application, as it was possible that the letter to which Ms Curran referred had not been delivered until after the return of the keys. It would also be important to see that letter and also any letter or email to the Applicant regarding his liability to pay the £400, as his contention was that it was not clear from that correspondence that the £400 covered only gardening in May 2023. The Applicant would be required to provide Track and Trace confirmation of the date on which his letter returning the keys was delivered.
11. The Tribunal Member told the Parties that the Case Management Discussion would be continued to a later date and that he would issue Directions regarding the documents he required them to provide. In the meantime, however, it was agreed between the Parties that the Respondent would transfer to the Applicant the sum of £1,800, as he presently held £2,400 and the amount in dispute was £600.
12. The Tribunal's Directions of 5 September 2023 required the Applicant to provide Track and Trace evidence confirming the date on which his letter returning the keys was delivered to the Respondent, and required the Respondent to provide copies of the intimation sent to the Applicant regarding his liability to pay gardening costs of £400 and of the letter put through the letterbox and fixed to the door of the Property intimating his ongoing liability to pay gardening costs down to the date of expiry of his notice of termination of the tenancy.
13. On 14 September 2023, the Respondent's representative provided the Tribunal with evidence that £1,800 had been paid to the Applicant.
14. On 22 September 2023, the Respondent's representative provided dated photographs of the garden of the Property and a print of a letter, dated 25 May 2023, from the Respondent to the Applicant. This letter informed the Applicant that the Respondent intended to have garden work undertaken on 31 May 2023, the cost of which would be deducted from the deposit. It also stated that the Applicant would be responsible for maintenance of the garden up until the end of his notice period and his failure to do so would mean that any further garden work costs would be deducted from the rent money held for him. The Respondent's representative also provided a copy of a Gumtree advertisement for the Property, which stated that there was a very large mature garden, to be maintained by the tenant or, by separate negotiation arranged by the landlord, and of a receipted Invoice from JK Landscape Services, dated 3 July 2023, for £600 in respect of cutting grass and other gardening work.

15. The Applicant provided Track and Trace evidence of posting of an item on 30 May 2023 and its delivery on the following day.

### **Second Case Management Discussion**

16. A second Case Management Discussion was held by means of a telephone conference call on the morning of 23 November 2023. The Applicant was present. The Respondent was again represented by Miss Carolann Curran.
17. Miss Curran told the Tribunal that it had been explained to the Applicant at a lengthy meeting at the Property, after which he signed the Tenancy Agreement, that the garden was very large and would require weekly maintenance. The Respondent, Miss Curran and her daughter had all been present during this conversation. The Applicant had been very keen to secure the Property and had offered £3,600 up front. She contended that it was made clear to him by the Respondent that any costs incurred would be deducted from this sum if he did not stay on, so the money handed over was not simply an advance payment of 6 months' rent. She insisted that this was the case, notwithstanding the fact that a handwritten receipt of 1 May 2023 was stated to be for "Deposit of £600 and rent money of £3,600" and had been signed by both Parties, with Miss Curran and her daughter witnessing the signing of document. The Gumtree advertisement provided by the Respondent contained a number of photographs of the Property and garden, dated 29 April 2023. These, Miss Curran said, showed the condition of the garden at the start of the tenancy, and the amount of growth in the following month was evident from further photographs provided by her, taken on 31 May.
18. The Applicant accepted that the meeting had taken place and understood that he would be liable to maintain a very large garden, but refuted the claim that he had been told it would require weekly maintenance or that the payment of £3,600 could be used for anything other than rent.
19. The Applicant said that he left the Property on 20 May 2023 and returned only once, on 25 May. He agreed that he was there around 11.30am. Miss Curran stated that, earlier that morning, she had been at the Property, as she has a horse there, and that she delivered to the Respondent letters that she had prepared on his behalf, to be pinned to the door of the Property and also put through the letterbox. One of the letters related to an abandonment process and the other was the letter dated 25 May 2023, advising the Applicant that the Respondent intended to have garden work undertaken on 31 May, the cost of which would be deducted from the deposit, that the Applicant would be responsible for maintenance of the garden up until the end of his notice period and that his failure to do so would mean that any further garden work costs would be deducted from the rent money held for him. Miss Curran stated that the Respondent had delivered and pinned to the door one of these letters prior to 11.30am and the other while the Applicant was in the Property and that the Respondent had sent her a photograph, timed at 11.46am, of the Applicant's car outside the Property. The respondent had not knocked on the door as he did not want any confrontation with the Applicant.

20. The Applicant denied that any letters were lying inside the Property or pinned to the door either when he arrived at the Property or when he left. Accordingly, he had no notification regarding his liability for gardening charges. When he subsequently agreed to the release of the deposit to the Respondent, he assumed that the figure of £400 was the final amount that he was expected to pay for gardening work. He questioned the veracity of the letter provided to the Tribunal, as it seemed to him to have been drafted to suit the narrative that the Respondent was now presenting.
21. It was clear to the Tribunal that there were several matters of fact on which the Parties entirely disagreed. The Tribunal would have to decide whether, tacitly or expressly, the Applicant agreed at a meeting prior to signing the Tenancy Agreement, that the sum of £3,600 might be applied in respect of any obligation other than that to pay rent. This would require the Tribunal to weigh up the evidence provided by those present at the meeting. Miss Curran had said that her daughter and the Respondent were there. The second main aspect to be decided by the Tribunal was whether the Applicant received the letter of 25 May 2023 informing him that garden work would be carried out and was, therefore, aware that work to be done on 31 May 2023 would be followed by further work in June. This would enable the Tribunal to decide whether The Applicant's stated assumption that the £400 of the deposit attributed to garden work was a final figure was a reasonable one to have made.
22. The view of the Tribunal was that the application could not be decided without the Parties being invited to lead oral evidence regarding the meeting prior to the signing of the Tenancy Agreement and the events of 25 May 2023. Accordingly, an oral Hearing would be fixed. The Hearing would, however, be restricted to consideration of the matters set out in the immediately preceding paragraph, and the Parties would be required to provide in advance a list of any witnesses they intended to call to give evidence.

## Hearing

23. A Hearing took place on the morning of 14 March 2024 at Anstruther Town Hall. The Applicant had indicated that he would not be attending and had nothing to add to what he had already submitted or told the Tribunal at the Case Management Discussions. He was adamant that there had been no discussion at the meeting of 1 May 2023 of the fact that the advance rent might be used for other purposes and that no letter had been pinned to the door or put through the letterbox on 25 May. The Respondent was unable to attend, as he is currently in hospital, but he was again represented by Miss Curran.
24. Miss Curran told the Tribunal that there was a meeting at the Property on 1 May 2023, at which the Applicant, the Respondent, Miss Curran and her daughter, Miss Katie McKenzie, were present. The garden had been discussed and the Respondent had told the Applicant that he (the Respondent) could arrange for gardening work to be done and the cost recovered from the Applicant, but the Applicant had said that he would carry

out the gardening himself. He mentioned that he might purchase a Rumba robotic mowing machine. The Applicant appeared extremely keen to secure the Property (there had already been a number of other enquiries) and offered to pay a year's rent up front. The Respondent had thought this to be too much, and 6 months was agreed. The Respondent had, however, made it very clear to the Applicant that if the garden was not properly maintained, or if there was any damage to the Property that was not covered by the tenancy deposit, he would be deducting the costs from the sum paid up front. The Applicant then paid £3,600 via on-line banking. He had difficulty in making the payment into the Respondent's account, but succeeded in paying it into an account in the name of Miss McKenzie. Miss Curran then drew up the receipt and the Parties signed it. Miss Curran stated that she did not think there could have been any doubt in the mind of the Applicant that if anything happened and the deposit did not cover it, the advance rent would be used. The photographs provided to the Tribunal were dated and showed, she said, that the garden was immaculate on 29 April 2023, two days prior to the meeting.

25. In relation to the events of 25 May 2023, Miss Curran told the Tribunal that she had been tending to her horse earlier in the morning and had handed to the Respondent a letter for him to attach to the door of the Property, with a copy to be put through the letter box. This was the letter advising him that the Respondent intended to have garden work undertaken on 31 May, with the cost being deducted from the deposit. It also stated that the Applicant would be responsible for the maintenance of the garden up until the end of his notice period and that his failure to do so would mean that any further garden work costs would be "deducted from the rent money we hold for you."
26. Questioned by the Tribunal, Miss Curran explained that the reason the letter had been pinned to the door and a copy put through the letterbox was that this was the process recommended by the local authority landlord registration department in relation to advice she had sought regarding establishing that the Applicant had abandoned the Property.
27. Miss Curran said that, at the time she handed the letter to the Respondent and when she left the Property at about 10.30 am, neither of them had any idea that the Applicant would turn up later that morning. The Applicant had heard sounds coming from the Property and had seen the Applicant's car. He then pinned the letter to the door and put a copy through the letterbox before going into the village to collect a prescription. He did not want to confront the Applicant, so did not try to deliver the letter personally.
28. The Tribunal questioned Miss Curran as to why the cost of gardening in June had been £600, when the cost for May was £400. She said that a different contractor had been used. Another gardener had quoted a higher price. By June, the grass was longer and there were more weeds to clear. The estimate provided by the Applicant had only been for strimming, rather than cutting, the grass.

29. The Tribunal then heard evidence from Miss Curran's daughter, Miss Katie McKenzie. She confirmed that she was present at the meeting on 1 May 2023 and heard the discussion with the Applicant to the effect that it was a very large garden and that he would be welcome to use the ride-on mower that was in the shed. The Applicant talked about getting one of the automated machines. The Respondent had offered to arrange gardening and told the Applicant that if he breached anything or did not look after the garden, the cost would be taken out of the advance rent if it was in excess of the tenancy deposit. The Respondent had made it clear to the Applicant that the Property had been his mother-in-law's house and the house and the garden held sentimental value for him. He had made that very clear to the Applicant.
30. Miss Curran and Miss McKenzie then left the Hearing, and the Tribunal Members considered carefully all the evidence, written and oral, before them.

### **Reasons for Decision**

31. The Tribunal was clear in its view that the Applicant was responsible for the cost of maintaining the garden until the expiry of his period of notice, which, in his notice to leave, was stated to be at the end of June 2023. Accordingly, he was responsible for the gardening bill of £400 following work done on 31 May and also for reasonable gardening costs for June.
32. The Tribunal noted that the Applicant had agreed to a gardening cost of £400 being deducted from his tenancy deposit, but that he had understood this to be the final bill. He also agreed to the balance of the deposit being paid to the Respondent for cleaning and damage. The deposit was remitted by SafeDeposits Scotland to the Respondent on 30 June, the correspondence with the Applicant having begun on the previous day. This process predated the Invoice for £600 provided by JK Landscape Services dated 3 July 2023.
33. The Tribunal decided, on the balance of probabilities, that the Respondent had told the Applicant at the meeting on 1 May 2023 that the advance rent might be used to cover damage or gardening costs not covered by the deposit. Miss Curran and Miss McKenzie had both given evidence to that effect. The Tribunal was also satisfied, again on the balance of probabilities, that the Respondent had pinned a letter to the door and posted a copy through the letterbox on the morning of 25 May 2023 at a time that the Applicant was inside the Property. It was not a credible argument that he would have failed to see them when exiting the Property and locking the front door.
34. The letter of 25 May 2023 stated that gardening work was going to be carried out on 31 May, so the Applicant must have been aware that it was likely that there would be further costs involved for gardening work in June. The Tribunal accepted that the Respondent could have communicated better with the Applicant by making it clear that the £400 bill covered May only, but was of the view that the Applicant would have been aware that that was the case. The Respondent had sent him a letter on 17 May, stating that he had been given an estimate of £400 to do the garden and if he did not hear back from

the Applicant by the following day, he would assume the Applicant was in agreement to the garden work being undertaken. The Applicant must have known that this would refer to work required in May and that he should expect further charges for gardening work to 30 June, when his notice to leave expired.

35. The Tribunal then considered whether the bill for gardening work in June was reasonable and whether, as it was considerably higher than the May bill, the Applicant should have been given notice and an opportunity to challenge it. The view of the Tribunal was that the fact that the Respondent was in a position to deduct the cost from the advance rental that he held did not give him carte blanche to have whatever work he wished carried out at the Respondent's expense. The Tribunal did not consider that the cost of normal maintenance in June should have been noticeably higher than in May and, if it was to be, the Applicant should have been told and given the opportunity to challenge the amount being retained. The Applicant was, however, deemed to have regarded the sum of £400 as being reasonable, as he had not objected to its being deducted from the tenancy deposit and the Tribunal had already held that the Applicant must have been aware from the correspondence of 17 May that, as the Respondent intended to instruct the gardener on the following day, this was work for May only. Accordingly, the Tribunal decided that the sum which the Respondent could reasonably be asked to pay for the June gardening work was £400, and the Tribunal made an Order for payment by the Respondent to the Applicant of £200, being the difference between the gardening cost and the amount sought in the application (when the £1,800 already refunded to the Applicant was taken into account).

36. The Tribunal's Decision was unanimous.

## **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.**

**Legal Member/Chair**

**14 March 2024  
Date**