



**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/22/4426**

**Property : 3 Balfroon Loan, Edinburgh EH4 7LA (“Property”)**

**Parties:**

**Krzysztof Kuncewicz, 3 Balfroon Loan, Edinburgh EH4 7LA (“Applicant”)**

**Catherine Smith, 244 Willowbrae Road, Edinburgh EH8 7NG (“Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £1,544.48 plus interest thereon at the rate of 8% per annum should be made.**

**Background**

1. The Applicant sought an order for payment of £2938.98 plus interest at the rate of 8%. The Applicant had lodged Form F on 15 December 2022 along with supporting documents.
2. A Case Management discussion (“CMD”) was scheduled to take place before the Tribunal on 12 October 2023. This was postponed until 23 January 2024. At the continued CMD there was no appearance by or on behalf of the Respondent. The Tribunal granted an order for payment of £1538.98 plus interest and issued a Decision. Both were dated 24 January 2024. The Respondent sought recall of the Decision which was granted by Decision dated 27 February 2024. As part of the recall application the Respondent stated that she had given her son, David McDonald, full power to deal with her affairs and a copy power of attorney dated 1 February 2024 was produced. In the application for recall the Respondent stated that the claim was disputed in its entirety. A CMD took place on 7 August 2024. Reference is made to the note of the CMD. The outcome was that a continued CMD was fixed for 22 January

2025 and a direction was issued. The Applicant lodged a response to the direction on 16 September 2024. The Respondent did not lodge a response to the direction.

### **Continued CMD**

3. A continued CMD took place on 22 January 2025. The Applicant was in attendance. There was no appearance by or on behalf of the Respondent.
4. At the CMD on 7 August 2024 the Tribunal noted that the following was agreed:
  - At the end of the tenancy there was unpaid rent of £1538.98
  - At the end of the tenancy the Applicant was entitled to retain £60 from the deposit in respect of the cost of tracing an address for the Respondent.
  - At the end of the tenancy the Applicant was entitled to retain £148.50 from the deposit in respect of the cost of installing a new shower screen.
  - The Applicant's claim for the cost of removing a satellite dish (£40), the cost of removing a fence (£100), flat rental for 14 days (£1120) and the cost of van rental (£140) were withdrawn.

The Tribunal noted that the following was in dispute :

- Whether the administrator of an approved deposit scheme had paid the deposit to the Applicant having followed the processes set out in the Tenancy Deposit Schemes (Scotland) Regulations 2011 in respect of the costs of cleaning (£215), clearance (£200) and gardening (£500) which totalled £915.
5. The Applicant had lodged a response to the direction issued by the Tribunal which included communications from SafeDeposits Scotland which indicated that the Respondent had not responded to the proposal for repayment of the deposit issued by SafeDeposits Scotland. In terms of the proposal the deposit of £1,118 was to be paid to the Applicant to cover the cost of cleaning, removal of items and gardening of £915 and rent arrears of £1,538.98. The Applicant's claim to retain £915 from the deposit for cleaning, removal of items and gardening had therefore been determined by the deposit scheme administrator.
  6. At the CMD on 7 August 2024 the Respondent's Representative had agreed that the arrears at the end of the tenancy were £1,538.98 and that the Applicant was entitled to retain £60 for the cost of a trace and £148.50 in respect of a new shower screen. The Respondent's Representative had not lodged a response

to the direction issued or attended the continued CMD to dispute the sums claimed.

7. The entitlement to payment of £915 was determined by the tenancy deposit scheme process. The entitlement to payment of £1,538.98, £60 and £148.50 was undisputed. These sums total £2453.98. If the deposit of £1118 is deducted from that figure it leaves a balance due of

### **Findings in Fact**

8. The Tribunal made the following findings in fact:
  - The Applicant and the Respondent had entered into a Private Residential Tenancy Agreement dated 23 January and 13 February 2019 which commenced on 13 February 2019 ("Tenancy Agreement").
  - In terms of the Tenancy Agreement the rent was £745 per calendar month.
  - The tenancy came to an end on 13 July 2022.
  - The Respondent failed to pay the rent due on 13 May, 13 June and 13 July 2022 totalling £1538.98.
  - The Respondent agreed that the Applicant was entitled to retain from the deposit £60 for the cost of a trace and £148.50 for the cost to replace a shower screen.
  - Safedeposits Scotland had followed the process set out in the Tenancy Deposit Schemes (Scotland) Regulations 2011 in respect of the costs of cleaning (£215), clearance (£200) and gardening (£500) which totalled £915.
  - The Respondent did not respond to the proposal issued by Safedeposits Scotland in terms of which the whole deposit of £1,118 was to be paid to the Applicant.
  - In terms of clause 8 of the Tenancy Agreement the Applicant may charge interest on unpaid rent at the rate of 8%.

### **Reasons for the Decision**

9. In terms of the Tenancy Agreement rent was due at the rate of £745 per month. The tenancy came to an end on 13 July 2022. The Respondent failed to pay the rent due on 13 May, 13 June and 13 July 2022 totalling **£1538.98**. This was a matter of agreement. It was also agreed that the Applicant was entitled to payment of **£60** for the cost of a trace and **£148.50** for the cost to replace a

shower screen. The Applicant's entitlement to payment of **£915** in respect of the cost of cleaning, clearance and gardening was determined by the deposit scheme administrator. These sums total £2662.48. The deposit of £1,118 was paid to the Applicant and falls to be deducted from that figure leaving a balance due of **£1,544.48**.

10. In terms of clause 8 of the tenancy agreement the Applicant is entitled to charge interest at the rate of 8%. The Tribunal determined to grant an order for payment of £1,544.48 plus interest thereon.

### **Decision**

11. The Tribunal grants an order for payment of £1544.48 plus interest thereon at the rate of 8% per annum.

### **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.**

# Joan Devine

**Joan Devine  
Legal Member**

**Date : 22 January 2025**