

Housing and Property Chamber
First-tier Tribunal for Scotland



**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/19/0487

**Re: Property at 39A Alder Drive, Portlethen, Aberdeen, AB12 4WA (“the
Property”)**

Parties:

**Mr James Brown, 39 Alder Drive, Portlethan, Aberdeen, AB12 4WA (“the
Applicant”)**

**Mr Ryan Booth, c/o Kintore Autobody, Hill of Cottown, Inverurie, AB51 0YA
 (“the Respondent”)**

Tribunal Members:

Fiona Watson (Legal Member) and Melanie Booth (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order against the Respondent(s) for payment of
the undernoted sum to the Applicant(s):**

**Sum of TWO THOUSAND ONE HUNDRED AND FIFTEEN POUNDS AND
TWENTY-TWO PENCE (£2, 115.22) STERLING**

1. An application dated 12 February 2019 was submitted to the Tribunal under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a payment order against the Respondent in relation to rent arrears and damage, repairs and cleaning costs accrued under an assured tenancy agreement.
2. A Case Management Discussion (“CMD”) took place on 30 April 2019 and was continued to 11 June 2019 for the Applicant to lodge additional documents to rely upon as evidence for his claim. At the continued CMD on

11 June 2019, the Applicant attended with his wife, Mrs Brown. The Respondent was represented by his solicitor, Mr Purdie. The Respondent indicated that he wished to defend the application and dispute the claim made. The Respondent's position was that he had withheld rent due to repairing issues in the property and due to the Applicant taking access to the property without authority. Accordingly, a hearing was fixed and a Direction issued for both parties to lodge any further documents they intended to rely on prior to the Hearing.

3. The Hearing took place on 6 August 2019. The Applicant was personally present alongside his wife, Mrs Brown. The Respondent was personally present and represented by his solicitor, Mr Purdie. As a preliminary issue, the Tribunal confirmed that as it had been established during the prior CMD that the lease was in fact a Private Residential Tenancy rather than a Short-Assured Tenancy, then the correct rule number that the application should be considered under would be Rule 111. The parties confirmed that they had no comments to make in this regard and were agreeable to matters proceeding on that basis.
4. The Applicant moved for the order for payment to be granted as sought in the sum of £4,385.62. The parties had entered into a Private Residential Tenancy Agreement which commenced on 12 January 2018. The Applicant's claim comprised a number of heads of claim which are listed below:
 - (a) Rent arrears: £3 x £650 for March, April and May 2019
 - (b) 1hr plumber's time when the Respondent failed to allow timeous access: £38
 - (c) Carpet cleaning: £90
 - (d) Replacement of doors: £280
 - (e) Electricity: £20.24, £5.77 and £9.25
 - (f) Painter decorator: £960
 - (g) Cost of raising a Simple Procedure action against the Respondent: £120
 - (h) Cost of serving Simple Procedure papers on Respondent: £102
 - (i) Cost of cleaning/clearing property: £300
 - (j) Cost of broken blinds: £226
 - (k) Cost of 2 new locks: £46
 - (l) Cost of new oven: £99.99
 - (m) Replace broken freezer drawer: £50.96
 - (n) Bank charges: £87.41
5. The Respondent accepted liability for the items listed (d) and (e) above.
6. The Tribunal heard evidence for each head of claim listed above and the considerations of same are noted below:
 - (a) The Applicant submitted that the Respondent had abandoned the property. Following taking advice, they issued a Notice to Quit requesting that the Respondent remove from the property on 13 May 2019. They considered that the Respondent ceased living in the property shortly thereafter but despite efforts to make contact with the Respondent to

ascertain if he intended to return his keys, he failed to communicate with them. They took steps to change the locks on 3 June 2019 when they reasonably considered that the Respondent was no longer occupying the property. In his evidence, the Respondent did not consider that he was liable for rent from March to May as he said he had been deprived of access to the property for that time. He was very vague about when the locks were changed. He couldn't give a date as to when he discovered the locks had been changed. He confirmed that he took up another tenancy elsewhere which started on or around 16 May. His position was that he considered that the locks had been changed in April, but could not give specifics on that. He submitted that when he discovered the locks had been changed, he did not think it appropriate to knock on the landlords' door (who reside next door) to request access. He did not make any requests for access. He submitted that he had a number of personal items in the property, but did not take any steps to be reunited with same. The Tribunal did not find the Respondent particularly credible in this regard. They found the Applicant's evidence credible. The Tribunal considered that the Respondent was liable for payment of rent up to the point his alternative tenancy started, being 16 May 2019. Accordingly, the Tribunal found the Applicant entitled to payment of £1,625 for rent.

- (b) The Applicant submitted that he had notified the Respondent that access was required for the plumber to inspect an issue reported by the Respondent on a certain date and time. When they attended at the property, the Respondent was not home and his girlfriend answered the door. She refused access. The plumber therefore had to charge an extra hour for his time waiting for the Respondent to return home. The Respondent accepted he had been notified of the date and time of the access being required, but had been told to liaise with the plumber directly if there were any issues. He had text the plumber asking him to move the appointment back but received no response. The Tribunal were satisfied that the Respondent was obliged to give access upon receiving reasonable notice and failed to do so. The Applicant had incurred cost and therefore was entitled to reimbursement of the £38 vouched for.
- (c) The Applicant incurred cost for £90 in cleaning the carpets. Photos were lodged showing the state of the carpets at the end of the tenancy. The Respondent submitted that he had not been given an opportunity to clean the carpets as he had been deprived of access. However, the Tribunal was not satisfied that he had been unlawfully deprived of access and furthermore he admitted that he had never requested access following the locks being changed. Accordingly, the claim for cleaning was awarded.
- (d) This was admitted by the Respondent.
- (e) This was admitted by the Respondent.
- (f) The Applicant submitted that the property required to be redecorated due to inadequate standard of painting done by the Respondent. The Respondent submitted that he had asked for permission to repaint and

been given this. The Applicant confirmed that they had given permission and also confirmed when asked, that they did not stipulate any specification, parameters or conditions alongside the painting. Accordingly, the Tribunal did not consider that this head of claim was justified, as they had given blanket permission for painting to be done and it was reasonably foreseeable that such a young tenant would be unlikely to have satisfactory painting skills. This head of claim was not awarded.

- (g) Refused by the Tribunal for the reasons stated at (h) below.
- (h) The Applicant had previously raised a simple procedure application against the Respondent, which had been dismissed by the court as lacking jurisdiction. The Tribunal found that the Respondent could not be held liable for the costs incurred in the Applicant's failure to raise their claim in the correct legal forum.
- (i) The Applicant submitted that he had to clear the property of a large number of items, as well as carry out cleaning in the property. He had hired a "man with a van" at the cost of £100 to remove certain items, and the remaining £200 was calculated as his time spent dealing with matters. The Respondent submitted that this was not justified as firstly he should have instructed a professional if the works were required, and secondly that the works were not required in any event as they had been deprived of the opportunity to carry out the works themselves. Both the Respondent and his girlfriend in their evidence admitted that the property was a mess when they left it. Also, they confirmed that they had never requested access. Accordingly, the Tribunal was satisfied that the costs incurred were reasonable and necessary, and this was awarded.
- (j) The Applicants confirmed that they had not yet purchased new blinds and therefore the Tribunal did not uphold this element of the claim as no loss had been incurred.
- (k) The Applicant claimed £46 for new locks for front and back door following them taking repossession of the property, as the Respondent did not return his keys. The Respondent disputed this on the basis that he did not consider they should have replaced the locks at all. The Tribunal was satisfied that the Applicant acted reasonably in changing the locks under the circumstances and that the cost claimed was reasonable. Vouching was produced.
- (l) The Applicant claimed the cost of £99.99 for a new oven purchased for the property, which the Respondent had reported as being faulty. The Tribunal did not consider that this cost could be awarded. The Applicant was under an obligation to replace or repair the oven to comply with the Repairing Standard and this was not a cost chargeable to the tenant.

- (m) The Applicant claimed the cost of a new freezer drawer which they submitted had been broken by the Respondent during the tenancy. The Respondent submitted that this had been broken at the time of entry and he wasn't liable for same. The Applicant gave evidence that they had cleaned the freezer prior to the start of the lease and the drawer was in tact at that stage. The Tribunal preferred the Applicant's evidence in this regard and awarded the claim.
- (n) The claim for bank charges was refused. The Applicant provided no submissions as to the legal basis upon which they considered that the Respondent was liable for these charges, nor was sufficient evidence lodged to show a direct causal link.
7. The Tribunal was not satisfied from the evidence of the Respondent that he had lawfully withheld his rent. In fact, the Respondent admitted in evidence that he hadn't withheld the rent by placing it in a holding account. He had simply not paid his rent. The Tribunal was not satisfied that sufficient evidence had been led to satisfy it that the property was rendered uninhabitable due to the alleged actions of the Applicants to enable a claim for abatement of rent. Whilst the Tribunal heard evidence from both the Respondent and his girlfriend, Sarah Duncan, that the Applicants had let themselves into the property without due notice or consent, this evidence was somewhat vague and lacked specification.
8. The Tribunal took into account that the Applicant had retained a deposit of £350 and this should be offset against the amount awarded. Accordingly, the Applicant was entitled to the Order for Payment in the sum of £2115.22.
9. The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of TWO THOUSAND ONE HUNDRED AND FIFTEEN POUNDS AND TWENTY-TWO PENCE (£2, 115.22) STERLING

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.

Fiona Watson

Legal Member/Chair

6/8/9

Date