



**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/21/2074

**Re: Property at Chalet D, Heatherwood Park, Dornoch, IV25 3QJ (“the
Property”)**

Parties:

**Mr Roger J Taylor, South Seas, Mile End, South Road, Peterhead, AB42 2GG
 (“the Applicant”)**

Mr Robert Barrow, 19 Davis Drive, Aness, IV17 0ZD (“the Respondent”)

Tribunal Member:

Neil Kinnear (Legal Member) and Linda Reid (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that**

Background

[1] This was an application for a payment order dated 30th August 2021 and brought in terms of Rule 70 (Application for civil proceedings in relation to an assured tenancy under the 1988 Act) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

[2] The Applicant originally sought payment of arrears in rental payments in relation to the Property from the Respondent of £4,440.00, and provided with his application a rent arrears statement.

[3] The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 23rd September 2021, and the Tribunal was provided with the execution of service.

[4] A Case Management Discussion was held on 27th October 2021 by Tele-Conference. The Applicant participated, and was not represented. The Applicant's daughter, Mrs Lauren O'Neill, also participated. The Respondent participated, and was not represented. Mrs O'Neill explained that she now ran her father's letting business on his behalf, and had taken a half-share in that business.

[5] The Tribunal had a detailed discussion with the parties noting that each, if they wished to establish their respective cases in the various applications, required to lodge evidence providing details of the date and circumstances in which payments were made, received and withheld.

[6] The Tribunal explained the information it required in order for it to be able to make a just decision in this application, and the Tribunal issued parties with directions confirming the information it required on 27th October 2021 and 12th January 2022.

[7] By e-mail to the Tribunal dated 19th November 2021, the Applicant amended the sum sought in this application to the Figure of £10,870.00 in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended, and provided an updated rent arrears statement.

The Hearing

[8] A Hearing was held on 11th May 2022 and 4th July 2022 by Tele-conference. The Applicant participated, and was represented by his daughter, Mrs Lauren O'Neill. The Respondent participated, and was not represented.

[9] The Tribunal heard evidence from the Mrs O'Neill, from the Respondent, from the Respondent's partner, Ms Ellen Dewar, and from the Respondent's friend, Mr Duncan McLeod.

Findings in fact

[10] After hearing all the evidence led by both parties on the issues in dispute between them and upon which the Tribunal required to reach a decision, the Tribunal found in fact:

- a) That the Respondent entered into an assured tenancy agreement for the Property with the Applicant on or about June 2015. The agreement was verbal, and was never reduced to writing.
- b) That the Respondent initially agreed to pay rent of £500.00 per month, which figure was reduced by agreement between the parties to £400.00 per month with effect from on or about March 2016.
- c) That the Applicant agreed to waive payment of rent otherwise due in July, August, September and October 2015 as a goodwill gesture to allow the Respondent to install a different heating system in the Property.
- d) That the Respondent quit the Property on 18th June 2021.
- e) That the Respondent made intermittent payments in respect of rent to the Applicant from November 2015 to 18th June 2021, and has accumulated rent arrears of £10,870.00 to 18th June 2021.

- f) That the Respondent has failed to establish any entitlement to set off any other payments and expenditure made by him in respect of the Property against the accumulated rent arrears.

Findings in law

[11] The Tribunal found in law:

- a) That the Respondent in terms of the parties' contract requires to make payment of the sum of £10,870.00 to the Respondent in respect of unpaid rent.

The Evidence

[12] The Tribunal heard evidence from Mrs O'Neill. She explained that the lease was agreed between the parties verbally, and was never reduced to writing. The Applicant was a friend of the Respondent's father, and the parties were personally acquainted. The lease commenced in June 2015, and ended when the Respondent quit the Property on 18th June 2021. The Respondent initially agreed to pay rent of £500.00 per month, which figure was reduced by agreement between the parties to £400.00 per month with effect from on or about March 2016.

[13] Mrs O'Neill referred the Tribunal to the updated rent arrears statement which disclosed rent arrears owed by the Respondent to the Applicant totalling £10,870.00. She explained that the Applicant agreed to waive payment of rent otherwise due in July, August, September and October 2015 as a goodwill gesture to allow the Respondent to install a different heating system in the Property.

[14] Mrs O'Neill referred to the Applicant's bank statements, which showed all the payments of rent made by the Respondent to him and which were paid by bank transfer. The Applicant did not accept that any further additional payments in respect of rent were paid to him by the Respondent in cash, nor did he accept that he agreed to waive any other payments of rent in respect of any work to the Property for which he as landlord was responsible but did not carry out, and which were instead carried out by the Respondent. Mrs O'Neill explained that the Property was only 2 years old when the tenancy commenced and in excellent condition.

[15] The Respondent accepted that he did owe some money in respect of rent arrears to the Applicant. However, he stated that the sum sought was excessive. He estimated that he owed approximately £2,000.00 to £2,300.00 in rent. In response to the Tribunal's enquiry, he was unable to give a precise figure for the rent arrears, nor any calculation to establish the basis for his assertion.

[16] The Respondent asserted that the Applicant did not fulfil his duties as landlord with respect to maintenance and repair of the Property. Instead, the Applicant agreed to the Respondent setting off against payments of rent otherwise due the cost incurred by the Respondent in respect of any such maintenance and repair work which the Respondent carried out.

[17] The Respondent referred to his e-mail to the Tribunal dated 18th December 2021, in which he listed twenty-one pieces of work which he asserted he carried out to the Property, and which he asserted the Applicant agreed to him setting off against rent. He explained that he did not keep any record of these works, and as a result was unable to give any precise dates for when they were carried out. He gave indications of approximately when he believed the various works were done.

[18] Similarly, the Respondent explained that he had kept no record of exactly how much he had spent in respect of the work, and had instead provided his own estimates based on his recollection. He had kept no record of the details of the work carried out, but provided a general overview of what was done. He could not produce any evidence to show payment of the sums listed, nor could he produce any receipts from the tradesmen that had carried out the works listing the costs and outlining the work undertaken. He estimated that the total cost of all the works listed was approximately £4,500.00 to £5,000.00. He was unable to produce any evidence that the work listed was the responsibility of the landlord to undertake, largely due to his inability to explain in detail the nature of the defects, and why the landlord was responsible for repair of those in terms of the lease agreement.

[19] Finally, the Respondent asserted that in addition to making payment of rent by bank transfer, the Applicant had on approximately ten to fifteen occasions turned up at the Property and asked him for further payment of rent of amounts varying between £250.00 to £500.00 in cash. He was unable to provide any dates of any such occasions, nor any accurate calculation of the total amounts which he alleges he paid in cash. The Respondent did not produce any bank statement showing any cash withdrawals made by him of the amounts which he alleges he paid in cash, stating that he made payment from cash which he kept in the Property from time to time.

[20] Ms Ellen Dewar, the Respondent's partner, gave evidence that she became engaged to the Respondent in 2018. She had initially stayed two nights per week at the Property with the Respondent from 2017 to 2020, before moving in full-time at the commencement of the first covid lockdown in March 2020.

[21] Ms Dewar stated the Applicant never carried out any repairs to the Property, and told the Respondent to undertake any necessary repairs and to deduct the cost from his rent payments. The Applicant would occasionally arrive at the Property to cut the grass, and would ask for cash payments from the Respondent. Ms Dewar stated that she had witnessed him do this on two occasions. On one of those he explained that he wanted cash so he could take his wife shopping. On some occasions the Respondent had cash at the Property, and on others he asked his mother in an adjoining property for the cash. Ms Dewar could not identify the dates of any such payments including the two she stated she had witnessed, nor could she confirm how much money was paid to the Applicant by the Respondent. She took the Respondent at his word that no rent was due at the time the cash payments were made.

[22] Ms Dewar stated that she had been present when the Applicant telephoned the Respondent, and heard his voice on the telephone asking for money. She was able

to hear him because the Respondent had used the speaker phone facility for the call. She was again unable to identify even approximately the date of the alleged call. She asserted that the Applicant was not registered as a landlord on the register of landlords and as a result held no insurance in respect of the Property.

[23] Mr Duncan MacLeod gave evidence that he was a good friend of the Respondent. He stated that the Respondent instructed all works on the Property and organised tradesmen to do that work. The Applicant asked for cash payments when carrying out ground care surrounding the Property and its neighbours. Mr MacLeod could not identify the dates of any such requests for payment by the Applicant. Mr MacLeod stated that he had on one occasion lent the Respondent about £400.00 for a cash payment made by the Respondent to the Applicant. He could not recall the precise date of the loan, but only that it was sometime around 2018 or 2019.

[24] Mr MacLeod stated that he had witnessed a telephone call from the Applicant to the Respondent in which he had asked the Respondent for a cash payment for rent, and also ask for a cash payment from the Respondent to allow him and his wife to go on holiday. He was unable to identify even approximately the date of the alleged call.

[25] Mr MacLeod stated that he had witnessed these things as he visited the Respondent at the Property multiple times every week. He had met the Applicant on five or six occasions. Money was not exchanged on each of these occasions. On occasions when he did see money handed over by the Respondent to the Applicant, he simply saw a "wad of cash" and did not know how much cash the wad contained. He took the Respondent's word for it that no rent was due.

Submission on behalf of the Applicant

[26] Mrs O'Neill submitted that the rent arrears statement disclosed the rent arrears owed by the Respondent to the Applicant and sought an order for payment of that amount.

[27] Mrs O'Neill invited the Tribunal to reject the evidence on behalf of the Respondent that he had made additional cash payments to the Applicant, and that he was entitled to set off work he carried out to the property against the rent due by him.

Submission on behalf of the Respondent

[28] The Respondent submitted that he did owe rental to the Applicant, but that he estimated that the correct amount was somewhere in the region of £2,000.00 to £2,300.00. He was unable to give a precise figure, nor any detailed basis for this calculation.

[29] The Respondent submitted that he had made additional cash payments to the Applicant, but was unable to estimate how much those payments totalled.

[30] The Respondent submitted that he was entitled to deduct the cost of various works which he had paid for from the rent otherwise due, upon the basis that the Applicant had agreed to him doing so as the Applicant refused to carry out those works which were his responsibility. The Respondent accepted that he could not provide accurate information regarding the dates of those works, the precise cost of them, nor any precise details of the full extent of work done or the basis upon which he asserted that they should have been undertaken by the Applicant.

Statement of Reasons

[31] Section 16 of the *Housing (Scotland) Act 2014* provides as follows:

“16. Regulated and assured tenancies etc.

(1) The functions and jurisdiction of the sheriff in relation to actions arising from the following tenancies and occupancy agreements are transferred to the First-tier Tribunal -

(a) a regulated tenancy (within the meaning of section 8 of the Rent (Scotland) Act 1984 (c.58)),

(b) a Part VII contract (within the meaning of section 63 of that Act),

(c) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988 (c.43)).

(2) But that does not include any function or jurisdiction relating to the prosecution of, or the imposition of a penalty for, a criminal offence.

(3) Part 1 of schedule 1 makes minor and consequential amendments.”

[32] Accordingly, the Tribunal has jurisdiction in relation to claims by a landlord (such as the Applicant) for payment of rent against a tenant (such as the Respondent) under an assured tenancy such as this.

[33] The Respondent accepted that he owed rent to the Applicant in respect of the tenancy of the Property. The only question for the Tribunal to decide in this application was the amount of the rent arrears.

[34] The Respondent did not dispute the terms of the updated rent arrears statement provided by the Applicant. However, he sought to establish that the sum of £10,870.00 disclosed ought to be substantially reduced in respect that firstly, he had made additional cash payments of rent to the Applicant which were not shown on the updated rent arrears statement, and secondly, that the Applicant had agreed to the Respondent setting off against payments of rent otherwise due the cost incurred by the Respondent in respect of certain maintenance and repair work which the Respondent had carried out.

[35] The Tribunal had on several occasions stressed to the Respondent the importance of providing evidence in respect of the sums he sought to deduct from the outstanding rent arrears in both respects. The Tribunal's direction to the Respondent of 27th October 2021 required him to produce written confirmation of the

amount and dates of all rental payments made by him to the Applicant identifying those made by bank transfer to the Applicant, and those paid in cash identifying to whom the money was paid by him, and written details identifying the works to the Property carried out at the Respondent's expense which he submits should have been undertaken and paid for by the Applicant as landlord, including details of the nature of the work done, when the work was carried out, and the cost of each item of work with any written receipts for work if available.

[36] The Tribunal found Mrs O'Neill to be a credible and reliable witness, who gave a straightforward account of the circumstances relating to payment of rental. The Tribunal accepted her evidence that no further additional payments in respect of rent were paid to the Applicant by the Respondent in cash, nor that the Applicant agreed to waive any other payments of rent in respect of any work to the Property for which he as landlord was responsible but did not carry out, and which were instead carried out by the Respondent.

[37] The Respondent was unable to provide any accurate quantification both with respect to any cash sums he asserted he had paid to the Applicant, and with respect to any work he had paid for to the Property which he alleged were costs which should have been born by the Applicant as landlord. In particular, he and his witnesses were unable to confirm the amounts and dates of any rental payments made by him to the Applicant in cash. The Tribunal noted that the Respondent stated that he had made such payments on ten to fifteen occasions, but Ms Dewar only claimed to witness two of those and Mr MacLeod less than six. None of them could say the dates when any such payments were made, nor even to estimate the total amounts paid.

[38] With regard to the Respondent's assertion that he was entitled also to set off the cost of any work he had paid for to the Property which he alleged were costs which should have been born by the Applicant as landlord, he again was unable to provide any precise dates when work was carried out, any detailed information about why the work was required and what was done, nor any precise figure of how much he paid and when he paid for works. He provided no evidence by way of receipts from those he paid to carry out the work and led no evidence from any of those involved in carrying out the work. He was unable to provide the Tribunal with any accurate and vouched figure for work, and did not lead any detailed evidence to explain the basis upon which he alleged the Applicant was responsible in terms of the lease for bearing the cost of those works.

[39] The Respondent asserted that he had no reason to keep any record of exactly how much he had spent in respect of the works which he had paid for nor of the cash sums he had paid to the Applicant, and had instead provided his own broad estimates based on his recollection. In the absence of any such specification, the Tribunal was unable to be satisfied about the amount of any deductions from the sums due even in the event that it accepted the Respondent's evidence on those points. The Tribunal had no evidence to identify the sums paid, and would be simply estimating, if not speculating, in identifying the sums involved.

[40] For that reason alone, the Tribunal was unable to make any deductions from the sum claimed by the Applicant. However, the Tribunal was not persuaded that the

evidence given on behalf of the Respondent was reliable. Much of what the Respondent and his witnesses asserted was based upon retrospective recollection years after the events in question, and were unsupported by any contemporary evidence even on such basic matters as to precisely what was done, on what dates, and at what cost. The Tribunal had directed the Respondent to provide proper specification over six months in advance of the Hearing date. He failed to do so.

[41] Accordingly, for these reasons, the Tribunal was not satisfied by the evidence of the Respondent in respect of any sums to be deducted from the rent arrears disclosed in the Applicant's updated rent arrears, and accordingly was satisfied that it should grant the order sought by the Applicant.

Decision

[42] For the above reasons, the Tribunal made an order for payment by the Respondent to the Applicant of the sum of £10,870.00.

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.

Neil Kinnear

Legal Member/Chair

Date: 4th August 2022