

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/22/0666

Re: Property at 48 Lowson Avenue, Forfar, DD8 1JZ (“the Property”)

Parties:

Mrs Gillian Troup, Mr David Troup, 9A Slatefield Rise, Forfar, Angus, DD8 1XB (“the Applicant”)

Ms Shannon Thompson, Mr Iain Angus, UNKNOWN, UNKNOWN; 37 Victoria Street, Forfar, Angus, DD8 3BA (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Eileen Shand (Ordinary Member)

Decision (in absence of the first named Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for the sum of £11,596.52 be granted in favour of the Applicants by the Respondents

- **Background**

1. This was a hearing to consider evidence and determine the application made by the Applicants, who are the owners and landlords of the Property for a payment of money in respect of rent arrears and costs relating to clearing, cleaning, repairing and painting the property, from the Respondents who are the tenant and guarantor in a lease of the Property from the Applicant respectively.
2. The application had been lodged on 3rd April 2022 and sought payment initially of the sum of £4,200 in respect of rent arrears the Applicant claimed had not been paid by the Respondents up to 3rd March 2022.
3. On 22nd May 2022 the Applicant lodged further documentation including a check in and check out report, statement of costs and estimate of further costs

and a 3 page e-mail with additional information about the tenant having left the property, with a request to amend their application to increase the rent arrears sought and to claim additional sums for damage and cleaning that they alleged were required to the property.

4. The note of the Case Management Discussion is referred to for its terms. As time was needed to intimate the claim for additional costs and the overall sum, as well as a further address to be provided for the first respondent who had left the Property the tribunal continued the matter to a further CMD. This also gave time for the second named respondent who was the guarantor to take legal advice.
5. A continued CMD was rescheduled initially for 4th August 2022 but postponement requests were received by all 3 parties on separate occasions and so the CMD finally took place on 2nd December 2022 at 2pm and the Applicants were both present as was Mr Angus the second named respondent and his wife Ms Fiona Angus. The First named respondent had initially been served by service by advertisement but then communicated by e-mail with the Tribunal on several occasions indicating she was aware of the date and time of the CMD. She was not present on 2nd December but had responded to the Tribunal by e-mail advising on 21st November confirming that *"I need some help. I haven't managed to seek legal advice due to appointments with a solicitor and I'm struggling to get one"*. She also indicated she was not working and would struggle to pay anything back.
6. The Applicants lodged a detailed letter dated 14th November but it was only received by the Tribunal on 21st November and crossed over to the other parties then, outlining their final claim for a total sum of £13,115.11 made up of rent arrears, interest on rent arrears and a claim for reimbursement of costs spent in clearing, cleaning and repairing the Property after the tenant left. They included a 70 page attachment with productions which include photographs, a rent statement, list of costs incurred and supporting invoices.
7. The Applicants advised that they had now completed most of the work to repair and clean up the Property and had submitted their final total cost which they advised was £13,115.11 as per their recent letter and productions. Mrs Troup also indicated that she had not charged for various items that were incurred by them and that were laid out in their submission. She was anxious to have the matter dealt with. Mr Angus indicated that he was still surprised and dismayed at potentially being liable for not just rent as a guarantor but also damage and that he had maybe not read the lease as well as he should have. He indicated he had taken some legal advice.
8. The Tribunal accepted the amendment to the application, but that in light of the fact Ms Thomson had responded to the Tribunal and had indicated she wished to seek legal advice and given the Tribunal has an overriding objective to deal with proceedings justly including ensuring so far as practicable that the parties are on equal footing and are able to participate fully in the proceedings, advised that it would only be fair to continue the case to allow Ms Thomson to make any representations after being given the chance to seek legal advice. This would also allow Mr Angus time to consider his response to the revised claim.

9. A hearing was then fixed so that both parties could lead evidence, and make submissions regarding the application. Ms Thomson was advised to seek legal advice and to be present or represented at the hearing and invited to lodge any written representations about the claim which would be taken into account by the Tribunal.

- **The Hearing**

10. The hearing took place by teleconference at 10am on 14th March. All parties had been intimated with the date and time of the hearing. The Applicants Mr and Mrs Troup were both present as was Mr Angus the second Respondent and his wife Mrs Fiona Angus. There was no appearance from Ms Thomson the first respondent nor was she represented. She had not lodged any further written representations for the Tribunal to consider.
11. The Legal member made introductions and advised that as Ms Thomson had been notified of the date and time of the hearing and the Tribunal had given her another 5 minutes to join the call the Tribunal would proceed with the hearing as it was fair to do so.
12. The Tribunal indicated it was going to go through the claim using the headings set out in Mrs Troup's letter dated 14th November 2022 which summarised the Applicants claim and set out the various heads of claim. The applicant was claiming £4,845 in rent arrears; £390.92 for interest on unpaid rent; and £7,879.19 in respect of costs relating to the rectification of damage to the property. The Tribunal had before it the following items:-
 - a. The Application dated 3rd April 2022
 - b. The tenancy agreement dated 20th, 21st and 25th March 2019 signed by the landlords, tenant Ms Shannon and the guarantor Mr Angus
 - c. Copy letters to tenant and guarantor dated between October 2021 and December 2021
 - d. Copy rent statement
 - e. Interest statement and detailed breakdown
 - f. Copy redacted bank statements
 - g. Landlord move out check list Letter of 14th November 2022 summarising the claim and providing further explanation of sums not claimed.
 - h. Statement of costs
 - i. Copy invoices to support costs claimed
 - j. Photographs taken at the check-out.
 - k. List of hours spent by the landlords on clearing and painting the property
13. The Tribunal indicated that it would take each heading of claim and ask the Applicant to confirm what and why they were seeking this and then ask the second named Respondent for his response and any submissions he had on each head of claim.

Rent arrears.

14. Mrs Troup took the lead for the applicants in presenting their case and making submissions. With regard to the non-payment of rent she confirmed that as

per the rent statement lodged after Ms Thomson had left, arrears had commenced once again from 1st July 2021. Prior to that she indicated that Ms Thomson who is the tenant in the Property had received help from her employers in paying off previous arrears and this is noted as a payment of £1550 on 6th April. Mrs Troup advised that from 1st July 2021 there was no further payment made by the tenant or the guarantor and that the tenant vacated the property around the end of April 2022 but she did not return the keys and it was only when neighbours complained about drug dealing and other people in the Property did she and her husband arrange for and have the locks changed on 9th May which she submitted was when the tenancy came to an end. Mrs Troup advised that the amount of rent arrears up to 9th May was £4,845 as per the rent statement lodged and that is the sum she is claiming. She advised the deposit was successfully reclaimed by the landlord and put towards the costs incurred in restoring the property.

15. Mr Angus has agreed that he is the guarantor in the lease of the Property where Ms Thomson was the tenant and advised that to the best of his knowledge that this was probably the amount of arrears but they did not know exactly. He confirmed he had received letters from the Applicants seeking payment of arrears. Mrs Angus advised that they used to have a close relationship with Ms Thomson and had tried to contact her and offer advice as had the landlords but the tenant had ignored them and shut herself off from them, she got involved in drugs and it was impossible to get through to her.
16. Mr Angus advised he was not challenging the rent arrears due.

Interest on the rent arrears.

17. Mrs Troup explained that she was seeking the sum of £390.32 in interest due in terms of the lease on the rent outstanding. She advised that she had provided a detailed calculation of interest to 2nd December 2022 and that it was calculated on a daily rate. The Tribunal noted the addendum to the rental statement showing a daily interest calculation amounting to £390.32 was charged in terms of Clause 8 of the tenancy agreement.
18. Mr Angus did not comment or challenge this head of claim.

Recovery of Costs in Respect of Damage to the Property

19. The first sub head of claim under this category is for **replacement carpets.**
20. Mrs Troup advised that she and her husband got access to the three bedroomed Property after the locks were changed. She advised that not only had the tenant not left any keys for the property but that the Respondent had changed the locks sometime during the tenancy and had not provided a set to herself or her husband as landlords despite requests for these to be provided. She advised that on entering the property there was an overwhelming foul smell and that you could not enter without face coverings it was so bad. Mrs Troup explained a major part of the smell was cat urine and faeces on the carpets. She confirmed that pets were not allowed in terms of the lease but despite this Ms Thomson had a cat and it had defecated and urinated all over the flat. She further advised that as some of the carpets were due to be replaced they were only claiming for part of the replacement carpets and floor coverings and not all of them. She referred to the statement of costs and the

invoice from Brian Worthington which shows the claim is a modified one of the full invoice for the sum of £1000.

21. Mr Troup confirmed and corroborated his wife's evidence about the stench in the Property and the condition of the flat generally when they gained access. He advised that on the day of the check out the tenant and her father were both present initially and the tenant's father was shocked at what he saw. He confirmed the smell hit you really strongly and remained with you for a long time it was so bad. He felt it was a mixture of cat urine and cigarette smoke. He also indicated he found evidence of vomit behind a radiator and cat faeces in a corner of one room.
22. Mr Angus confirmed that he and his wife had both attended the Property after Ms Thomson had left and agreed with the description by Mrs Troup and Mr Troup. He agreed there was a disgusting smell and Mrs Angus elaborated explaining that she had visited the flat several times with Gillian (Troup) and realised that they (she and her husband) were going to be liable for the costs so had tried to clean the carpets and agreed that wasn't possible and there was no dispute to this part of the claim.

Painting and Decorating

23. Mrs Troup explained that for this part of the claim which was for £933.14 this was made up of various purchases of paint, brushes and other ancillary pieces to allow the Troup family to repaint the whole property as the walls and doors were all filthy or covered in marks. She advised that they did the work mostly themselves to save on the cost of a professional painter and because they could not afford to hire one at that time. In addition she advised that the invoice for £430 from WK Gordon was for work done replastering and repainting radiators as neither she nor her husband had the skills to do that. Under questions from the ordinary member of the Tribunal she conceded there was one invoice that was duplicated and agreed the sum of £17.99 should be deducted. The total sought for this claim is therefore £915.15.
24. Mr Angus advised he was not challenging the cost of or the necessity of painting and decorating.

25. Clearance and Cleaning

26. Mrs Troup advised that there was a mountain of rubbish outside the front of the flat and outside the back and that there had been complaints from neighbours and fear of vermin. She confirmed that therefore included in this claim for £1,101.28 were the cost of 2 skips, 2 special uplifts from the council and some extra cleaning costs for window cleaning and cleaning of window frames. She referred to the various receipts for all of the items claimed which in total add up to the sum claimed and to the photographs lodged and the check-out report. She also explained that the skips were needed to remove wardrobes, carpets and other damaged property from inside the house.
27. Mr Angus again indicated he was not challenging this claim and agreed it all needed cleared. Mrs Angus confirmed that there was a lot of rubbish and it needed removed.

Garden Clearance and Fence Repair

28. Mrs Troup explained that the fence in the back garden had been destroyed by the tenant's son, she believed. She said it needed a tradesman to

- reconstruct it and then it was painted by themselves. She referred to the invoice lodged for £280 from JP Bernard for the materials and labour to repair the fence and the invoice for £13.97 for the paint, leaving a total of £293.97.
29. Mr Angus made no challenge or comment in relation to this claim.

Interior Door Replacement

30. The Applicants advised that some of the doors were completely destroyed or damaged by the tenant and could not be repaired. One had a panel missing completely others were filthy and covered in pen marks. Mrs Troup advised that as they did not want to have doors that did not match they had replaced all of them but were only seeking the recovery of the cost of 3 that were physically damaged. She referred to the photographs for further evidence of the damage and to the invoice lodged from their joiner S Cameron showing the cost of 10 replacement doors and charging only for 3 at a cost of £679.50 and a receipt for replacement door handles at a cost of £35.97 making a total for this part of the claim of £715.47
31. Mr Angus indicated he was not disputing this claim.

Kitchen Cabinet door replacement and Appliances replaced in the kitchen.

32. Mrs Troup explained the cost sought under this head of claim was £855 for replacing the fridge freezer, oven and hob and kitchen cabinet doors. She advised that the appliances were not only filthy but broken or damaged and were not able to be repaired. The Fridge door was dented and the hob buttons were missing as well as damage to the cupboard doors. Again she referred to the photographs lodged of the damage to the kitchen.
33. Mr Angus advised he was not challenging this claim and Mrs Angus advised that her sons had helped to remove the fridge freezer and accepted it had to go. She also accepted that the door was broken on the cooker and advised that Ms Thomson had tried to hide this.
34. The cost of the replacement appliances and replacement cupboard doors was £855 and invoices have been lodged to support this.

Bathroom Repair

35. Mrs Troup referred the Tribunal to pictures of the bathroom where she advised the tenant had removed the bath panel, allowed water to seep into the floor so floor boards needed replacing and tiles were smashed and needed replaced. She indicated that they recognised the bathroom would need replacing at some point so had only sought to recover part of the cost of the full works done to the bathroom and again referred to the invoice from S Cameron joiners where she has claimed £568.76 as part of the full cost which covers the cost of a wet wall, flooring as well as separate invoice for a replacement toilet seat.
- Again Mr Angus had no comment or challenge to make regarding this claim.

Front Door Repair

36. The Applicants confirmed they were claiming for the cost of damage to the front door caused they believe, by people attempting to gain access forcibly

during the tenancy. Mrs Troup advised the joiner had to replace the beading and this was at a cost of £58.76 as shown on the invoice lodged. She also referred to the photographs of the door showing the damage.

37. Mr Angus made no comment or challenge to this.

Blind Replacement

38. Mrs Troup advised that most of the blinds in the property were damaged or so filthy they required to be replaced. She advised they had vertical blinds in most rooms, but one room did not have blind and in another the blind was not damaged. In order to keep costs down she had replaced them with roller blinds but not charged for the two rooms which did not have blind or was not damaged. The total cost to replace the blinds that were damaged was £691.

39. Mr Angus agreed the blinds were damaged and needed replaced.

Entry Costs

40. As previously advised Mrs Troup explained that they required to have the locks changed to gain access to the property as they had no keys that worked due to the tenant changing the locks and not providing or returning any keys. The cost of this she advised is shown on the invoice from Bruce Locksmiths and Hardware for £113.94.

41. Mr Angus indicated he was not disputing the need for the locks to be changed nor the cost of this.

Meter Box Door Replacement

42. Mrs Troup referred to a picture of a damaged meter box door which showed a badly broken door and advised this was caused by the tenant and the cost of replacing this was £47.87 as per the invoice from Meter Box Direct. She advised that Ms Thomson had known of the damage and had offered to pay for it but it wasn't done.

43. Mr Angus made no comment or objection to the cost or charge for this.

Troup family labour charge.

44. The final claim was for the cost of labour incurred by both applicants and their son for their time in clearing, cleaning and painting the Property as a result of the mess, rubbish and damage done to the Property by the tenant. Mrs Troup had lodged a claim for £2000 and advised this was made up of 223 hours of their time spent on doing this work themselves in order to minimise the cost of the claim and to limit their own financial exposure. She advised that Mr and Mrs Angus had helped as well and as a result had reduced the claim to £2000. The hourly charge she was seeking to claim was £10 and she submitted that this was considerably less than a professional painter would have charged which she felt would be around £30 an hour and felt that £10 was a reasonable charge for the significant effort and labour they had put into repairing and restoring the property so it would be fit to re-let.

45. Mr Angus indicated this was the one claim he was seeking to challenge and asked his wife to speak this.

46. Mrs Angus advised that although they appreciated a lot of time had been spent on the flat they had also spent time and that the claim of £2,000 just did not sit well with them. She advised they would struggle to find the money to pay for the rest of the claim and although she did not deny work had been done and time spent, every part of life came with a risk and she did not think this claim was wholly fair.
47. The Tribunal asked Mrs Troup if she had any further comments or remarks to make in light of this challenge and although she confirmed she felt her claim was a fair representation of the time and effort they had spent on restoring the property she did recognise the input the Angus' had made although the cost of hiring a professional decorator would have been a lot more.
48. Mrs Troup then asked for a short break to discuss this part of the claim with her husband. The Tribunal adjourned for 10 minutes and on resumption of the hearing Mrs Troup explained that although they felt to drop the claim for labour feels wrong, they were willing to drop it from £2000 to £500. Mr Angus indicated he was happy to accept this generous offer and agreed that he would not challenge a sum of £500 for labour spent on the Property.
49. The ordinary member then checked that no part of the claim could have been recovered through insurance and Mrs Troup confirmed that they had checked this and been advised it was not recoverable.
50. Mrs Troup also indicated she would be willing to drop the claim for £500 if the Respondents were willing and able to make a swift payment of the rest of the claim. Mrs Angus responded to that advising that that would be unlikely as they had no savings and were not able to arrange a large monthly payment.
51. The Tribunal clarified with the Applicants that given their reduction to the claim for the charge for labour incurred the final claim was for the sum of £11,596.52. Mrs Troup agreed that was the final figure.

- **Findings in Fact**

1. The Applicants entered into a lease of the Property in the form of a Private Residential tenancy with the first named Respondent, Ms Thomson, who was the tenant in the property.
2. The lease commenced on 1st April 2019.
3. The Second named Respondent is Mr Angus who signed the lease as the guarantor and accepted that he would be responsible as guarantor for the payment of rent and other obligations of the tenant Ms Thomson.
4. The Rent due in terms of the lease was initially £500 per calendar month payable in advance
5. The tenant left the property around the end April 2022 but did not return the keys.
6. The Tenancy ended on 9th May 2022 when the locks were changed on the Property
7. The rent outstanding at 9th May 2022 is £4845.
8. In terms of clause 8 of the lease the landlord can claim interest on outstanding rent of 8%. The Applicants have charged 8% in respect of interest up to 2nd December 2022 amounting to £390.32.
9. The Property was left in a damaged and filthy state.
10. The cost of clearing, cleaning and repairing damage to the property amounts to £6,861.20.

11. The deposit of £500 has been returned to the Applicant and has been put towards the cost of damage.
12. The final cost of restoring the damage to the property after deduction of the deposit is £6,361.20.
13. The final sum outstanding and due for the cost of damages, rent and interest is £11,596.52.

- **Reasons for Decision**

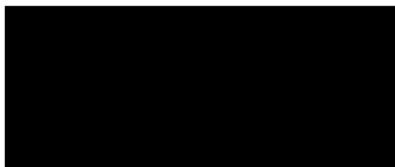
14. The Applicant and the first named Respondent entered into a lease dated March 2019 where the Respondent has leased the property from the Applicant and has agreed to pay £500 per month in rent. The Second named Respondent is the Guarantor in terms of the lease and has guaranteed to pay the rent and other obligations under this Tenancy Agreement, in terms of clause 49 of the lease.
15. The First Respondent has failed to pay the full rent due. The First Respondent has not paid anything since July 2021. The Applicant has made considerable attempts to write to and offer advice and support to the Respondent in respect of the arrears. The letters have been copied to the second named Respondent who is the Guarantor. Neither Respondent has paid anything towards the arrears.
16. The Tribunal heard from the Applicants who were clear and detailed in their statements and in the written summary and averments they have made that rent is due and outstanding interest is due on the arrears in terms of clause 8 of the lease and, that the Property was left by the first named Respondent in a terrible state, with substantial damage to doors and appliances, damage to carpets and floor coverings and with rubbish and debris left in both front and back gardens. The Applicants submissions were supported by the detailed written evidence contained in their check out report, the photographs that they lodged and the invoices they lodged supporting each element of their claim. The Second named respondent has attended with his wife Mrs Angus at the Property after the tenant left and has witnessed and was able to corroborate the claim made by the Applicant with regard to the extent of the damage done and the cleaning, clearing and repair work needed. The only head of claim Mr Angus challenged was that of the charge for labour carried out by the Applicants themselves and when that was reduced to £500 by the Applicants he accepted that as fair.
17. The Tribunal accepts the written evidence and verbal statements made by the Applicants who the Tribunal found clear and credible in their evidence that the total sum due after deduction of the deposit is £11,596.52. In light of the acceptance of this claim from the second named Respondent and the absence of any representations from the first named Respondent the Tribunal finds it fair and appropriate to make an order for payment for that sum today. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed.

- **Decision**

An order for payment of the sum of £11,596.52 is granted.

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:

Date: 14th March 2023