

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 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016 (“2016 Act”)

Chamber ref: FTS/HPC/CV/21/1141

**Re: Flat 2-1, 12 Torrisdale Street, Glasgow, G42 8PZ
 (“the Property”)**

Parties:

**Mrs Sabrina Ali, 58 Fruin Avenue, Newton Mearns, Glasgow, G77 6JA
 (“the Applicant”)**

**Mr Aleem Muhammad Haider Bibi and Samina Aleem, both formerly of Flat 2-1,
 12 Torrisdale Street, Glasgow, G42 8PZ, and currently of an address unknown
 (“the Respondents”)**

Tribunal Member:

Pamela Woodman (Legal Member)

Present:

The case management discussion in relation to case reference FTS/HPC/CV/21/1141 took place at 10.00am on Thursday 29 July 2021 by telephone conference call (“**the CMD**”). The Applicant was not present at the CMD but was represented by Mr Kenneth Caldwell of Patten & Prentice LLP (“**Applicant’s Representative**”). The Respondents were not present, nor were they represented, at the CMD. The Respondents had not informed the Tribunal that they would not be present. The clerk to the Tribunal was Craig Gemmell.

Decision (in the absence of the Respondents)

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

BACKGROUND

1. An application was made to the Tribunal under section 16 of the Housing (Scotland) Act 2014 (“**2014 Act**”) for civil proceedings in relation to matters associated with a tenancy under the Housing (Scotland) Act 1988 (“**1988 Act**”). The application was made in terms of the First-tier Tribunal for Scotland Housing

and Property Chamber Rules of Procedure 2017 (“**HPC Rules**”) which are set out in the schedule to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended, (“**2017 Regulations**”). More specifically, the application was made in terms of rule 70 (*Application for civil proceedings in relation to an assured tenancy under the 1988 Act*) of the HPC Rules.

2. However, as part of the application paperwork, the Tribunal had been provided with a copy of a tenancy agreement in respect of the Property between the Applicant and the Respondents dated 1 March 2020 (“**Tenancy Agreement**”). The Tenancy Agreement stated that it was a private residential tenancy agreement (and was entered into after 1 December 2017). Accordingly, it was subject to the terms of the 2016 Act and an application in terms of rule 70 of the HPC Rules was not appropriate in the case of a private residential tenancy.
3. Accordingly, the Applicant’s Representative sought to amend the rule number under which the application was made from rule 70 to rule 111 of the HPC Rules. Given that the terms of the two rules are in the same terms, save only as to the legislation in terms of which the Tribunal obtained jurisdiction and so the types of tenancy to which they relate, the Legal Member was satisfied that there was no prejudice to the Respondents in allowing such an amendment. The Legal Member allowed the application to proceed in terms of rule 111 (*Application for civil proceedings in relation to a private residential tenancy*) of the HPC Rules.
4. The order sought was an order for payment.
5. The application form was accompanied by a rent payments schedule in respect of the period from 1 March 2020 to 5 May 2021 (“**Original Rent Payments Schedule**”) which showed an outstanding balance in respect of rent of £3,700.
6. A notice of acceptance of the application was issued by the Tribunal dated 14 June 2021 under rule 9 of the HPC Rules (“**Notice of Acceptance**”), which confirmed that the application paperwork had been received by the Tribunal between 14 May 2021 and 28 May 2021.
7. The Applicant’s Representative and the Respondents were each respectively sent a letter by the Tribunal dated 22 June 2021 confirming that the application had been received, intimating the date and time of the CMD and noting that written representations from the Respondents must be received by 13 July 2021. The Respondents did not provide any written representations to the Tribunal in advance of the CMD.
8. The Legal Member was provided with a certificate of intimation in respect of each of the two Respondents from Adam Armstrong, sheriff officer of Scott & Co, stating that the case papers, letter and other documentation were served respectively on each Respondent on 23 June 2021. The sheriff officer stated that he had done this:
 - a. in respect of Ms Samina Aleem, by delivering them to her personally within her dwelling place at the Property; and

- b. in respect of Mr Aleem Muhammed Haider Bibi, by leaving an envelope containing copies of the documents listed with a citation thereto, with Samina Aleem, wife and resident within the Property as he could not find Mr Aleem Muhammed Haider Bibi personally.
9. The Legal Member was satisfied, on the balance of probabilities, that the Respondents had been given notice of the CMD as required in terms of rule 24 of the HPC Rules and that the CMD could proceed to be heard in the absence of the Respondents in terms of rule 29 of the HPC Rules.
10. An application for an eviction order (case reference FTS/HPC/EV/21/1080) was withdrawn prior to the commencement of the CMD (by way of an e-mail from the Applicant's Representative on 9 July 2021) on the basis that the Respondents had returned the keys and ceased to occupy the Property.
11. On 2 July 2021, the Applicant's Representative provided an updated rent payments schedule in respect of the period from 1 April 2020 to 1 July 2021 ("**Updated Rent Payments Schedule**") which showed an outstanding balance in respect of rent of £4,250 as at 1 July 2021 and applied to the Tribunal to amend the sum claimed. This request was made more than 14 days prior to the date of the CMD.
12. This decision arises out of the CMD.

PROCEEDINGS

13. The Applicant's Representative confirmed that the Respondents returned the keys to the Property on Monday 5 July 2021 and were understood to have removed from the Property over the immediately preceding weekend.
14. In light of this, the Applicant's Representative confirmed that he withdrew his request to amend the sum claimed (to that set out in the Updated Rent Payments Schedule) and rather sought an order for payment in respect of £3,700 (being the amount set out in the Original Rent Payments Schedule, which did not include the rent payable in respect of June 2021 nor that payable advance in respect of July 2021, during which month the Respondents removed from the Property).
15. The Applicant's Representative was not in a position to confirm why the Original Rent Payments Schedule (and the Updated Rent Payments Schedule) was solely in the name of Mr A Muhammed Haider Bibi but noted that the Tenancy Agreement was in the names of both Respondents and they were jointly and severally liable for the rent. However, he also noted that primarily the first named Respondent had dealt with matters relating to the tenancy and so that might be the explanation but could not confirm this.
16. The Applicant's Representative confirmed that he was not aware of there having been any communication from the Respondents in relation to the CMD and that the only recent communication had been when they returned the keys to the Property. He noted that no explanation had been given for the non-payment of

rent and that it was understood that at least one Respondent had been in employment.

17. The Applicant's Representative noted that the Property had been left in a significant state of disrepair and that there would likely be a claim against the deposit held in that respect.

FINDINGS IN FACT

18. The Legal Member noted that the Applicant was the registered proprietor of the Property. It was registered under title number GLA111977.
19. In terms of the Tenancy Agreement, the Respondents were obliged to pay rent at the rate of £550 per calendar month in advance on or before 1 March 2020 and on or before the same date of each calendar month thereafter.
20. In addition, the Respondents were also obliged, in terms of the Tenancy Agreement, to pay a deposit of £600 to the Applicant at the start date of the tenancy or before. The Original Rent Payments Schedule (but not the Updated Rent Payments Schedule) included an entry indicating receipt of a deposit of £600 on 1 March 2020.

REASONS FOR DECISION

21. In the absence of any written representations or attendance at the CMD by the Respondents, the Legal Member had no information to suggest that the arrears of rent detailed in the Original Rent Payments Schedule were not due and payable. The Legal Member was satisfied, on the balance of probabilities, that the Respondents were in arrears of rent in the amount of £3,700 as at 5 May 2021 and as at the date of the hearing.

DECISION

22. The Legal Member decided that an order be granted in favour of the Applicant against the Respondents for payment of the sum of £3,700 (three thousand seven hundred pounds sterling).
23. The Legal Member refused the request from the Applicant's Representative for interest at a rate of 4% per annum on the amount claimed.
24. The order referred to in the paragraph 22 was intimated orally to the Applicant's Representative during the CMD.

Right of Appeal

In terms of Section 46 of the Tribunals (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.

P S Woodman

29 July 2021

Chair (Legal Member)

Date