

**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 Housing (Scotland) Act
2014**

Chamber Ref: FTS/HPC/CV/21/1249

Re: Property at 3 Lorimer View, Edinburgh, EH14 5DL (“the Property”)

Parties:

**Mr Stuart Sinclair, 3 Baberton Court, 478 Lanark Road, Edinburgh, EH14 5BL
 (“the Applicant”)**

**Mr Basil Nyabadza, Mrs Leighann Nyabadza, 8 Baberton Mains Bank,
Edinburgh, EH14 3ED (“the Respondents”)**

Tribunal Members:

Josephine Bonnar (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £4651.44 should be granted against the Respondents in favour of the Applicant.

Background

1. By application dated 24 May 2021 the Applicant seeks a payment order in relation to unpaid rent. A copy tenancy agreement, rent statements and Notice of an increase in rent were lodged in support of the application.
2. The application was served by Sheriff Officer on the Respondents on 17 August 2021. Both parties were advised that a Case Management Discussion (“CMD”) would take place on 15 September 2021 at 2pm by telephone case conference and that they were required to participate. They were provided with a telephone number and passcode.
3. The CMD took place at 2pm on 15 September 2021. The Applicant and the First Respondent participated.

Case Management Discussion

4. Mr Sinclair advised the Legal Member that the Respondents had vacated the property on 7 May 2021 owing the sum of £4655.58 in unpaid rent. The tenancy deposit had been recovered from the Tenancy Deposit Scheme but had been used to cover the cost of re-instating the property due to damage and missing items. No payments have been made and the sum claimed is still outstanding.
5. Mr Nyabadza advised the Legal Member that he thought that the sum specified in the application was incorrect, although he did not dispute the information provided about missed payments. He advised that his income had been adversely affected by the pandemic and that his wife had a baby and was not working as a result. He fully intended to repay the sum due and had offered to pay the sum of £50 until such times as his income improved, and he was able to offer a higher repayment instalment. He confirmed that he had not made an application for a time to pay direction.
6. Following discussion with both parties the Legal Member advised that the sum due in terms of the rent statement lodged appeared to be £4651.44. Both parties confirmed that they were happy that this figure was the correct sum due by the Respondents at the end of the tenancy. Mr Sinclair advised that the Respondents had not started making payments of £50 and that he would have opposed an application for time to pay at this rate due to the length of time it would take to clear the debt. Mr Nyabadza advised that he did not dispute the sum sought by way of a payment order and that he would endeavour to repay it as soon as he was able.

Findings in Fact

7. The Applicant is the owner and landlord of the property.
8. The Respondents were the tenants of the property in terms of a tenancy dated 5 and 12 October 2016. The tenancy ended on 7 May 2021.
9. The Respondents were due to pay rent at the rate of £955 per month.
10. The Respondents owe the sum of £4651.44 in unpaid rent to the Applicant.

Reasons for Decision

11. The application was submitted with a tenancy agreement and a rent statement. In terms of the tenancy agreement rent was due to be paid at the rate of £925 per month. The Applicant increased the rent payable from 1 January 2019 to £955 per month. The Respondents vacated the property on 7 May 2021.

12. The Legal Member had noted that the sum specified in the rent statement appeared to be incorrect, as it included a sum of £219.78 for the period 1 to 7 May 2021 when a calculation based on the daily rent indicated that the correct figure should be £215.64. Mr Sinclair confirmed that he accepted that an error had been made and that he was seeking a payment order for the amended sum of £4651.44. Mr Nyabadza also advised that he thought the calculation of the sum due was incorrect, although he did not dispute the missed payments shown on the statement. Following discussion, he confirmed that he accepted that the sum of £4651.44 was the correct figure. He confirmed also that this sum is unpaid and that he had not applied for time to pay but may do so when his circumstances improve if he has been unable to reach an informal agreement with Mr Sinclair.
13. In the circumstances the Legal member is satisfied that the sum of £4651.44 is due to the Applicant and that he is entitled to a payment order for this sum. As no time to pay application was submitted, the Legal Member did not consider whether it would be appropriate to make a time to pay direction.

Decision

14. The Legal Member determines that an order for payment for the sum of £4651.44 should be made.

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.

Josephine Bonnar, Legal Member

15 September 2021