



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/20/0277

Re: Property at Flat 2/2, 41 Balcurvie Road, Glasgow, G34 9QL (“the Property”)

Parties:

Mrs Kim Campbell, 29 Mary Slessor Wynd, Glasgow, G73 5RJ (“the Applicant”)

Mr Michael Warburton, Ms Phebean Forster-Jones, 4A Ross Place, Rutherglen, G73 5EY; Flat 1/2, 6 Connisborough Path, Glasgow, G34 9QB (“the Respondents”)

Tribunal Members:

Lesley Ward (Legal Member)

Decision (in absence of the Respondent)

- 1. The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the respondents shall make payment to the applicant the sum three thousand four hundred and seventy nine pounds (£3479).**

2. This is a second case management discussion ‘CMD’ in connection with an application in terms of 71 of the Private Housing (Tenancies) (Scotland) Act 2016 , ‘the Act’ and rule 111 of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, ‘the rules’ to recover rent arrears for the property. The first CMD on 23 July 2020 was adjourned and the tribunal made the following directions:
 - (1) The applicant to provide clarification in connection with the tenancy deposit of £375 paid by the respondent on 29 December 2019. In particular the applicant should provide a copy of any correspondence from the tenancy deposit scheme which confirms how the deposit was paid out at the end of the tenancy.

- (2) The respondent is to provide any receipt or other evidence to confirm that any payments were made in respect of rent which are not included in the applicant's rental statement of 27 February 2020 which details arrears of £3479.
3. The CMD proceeded by conference call due to the Covid-19 pandemic. The applicant attended the CMD with her representative Ms Simone Walda. Neither respondent attended. The second named respondent attended the first CMD on 23 July 2020. She provided Mr Warburton's current address. The tribunal had sight of the track and trace documentation which confirmed that the respondents had signed for the notification from the tribunal on 13 and 15 August 2020 respectively. Further, sheriff officers had served the application and notification on Mr Warburton personally on 28 July 2020 at his new address after the first CMD. The tribunal was satisfied that the appropriate notification had been given in terms of rule 24. The tribunal proceeded with the CMD in terms of rule 29.

4. **Preliminary matters**

The tribunal noted that the first respondent had written to the tribunal on 23 August 2020 by email making comments in connection with the deposit for the property. Ms Wolda advised that she wrote to the tribunal on 17 August 2020 with the documentation requested in the tribunal direction. She explained that the deposit of £375 was retained by the applicant due to the condition of the property. It was this that the respondent appeared to be disputing in his email. It was Ms Wolda's position that the applicant had complied with the direction. It appeared to the tribunal that the respondent had not complied the direction issued in relation to him. Ms Campbell confirmed that she is the owner of the property and the land certificate is in her maiden name.

5. The tribunal had before it the following copy documents:

- (1) Application dated 26 January 2020.
- (2) Rent statement with rent arrears as at 24 December 2019
- (3) Rent statement with rent arrears as at 27 February 2020.
- (4) Private Residential Tenancy agreement dated 22 December 2017.
- (5) Land certificate.
- (6) Email from respondent dated 23 August 2020.
- (7) Email from applicant's representative dated 17 August 2020.

Summary of Discussion

6. The applicant was seeking an order for the sum of £3084 which was the arrears of £3479 less the deposit. At the first CMD on 23 July 2020 Ms Campbell was unsure whether the deposit had been returned to the respondent or not. Ms

Wolda advised that she has lodged documents which confirmed that the entire deposit was retained by the applicant due to the condition of the property. Ms Campbell stated that the deposit should be deducted from the arrears. The tribunal stated that an order for £3084 would be granted.

Findings in fact

7. 1) The applicant is the owner of the property.
- 2) The applicant and first respondent entered into an agreement for let of the property in December 2017.
- 3) The second respondent signed the agreement as guarantor.
- 4) The agreed rent was £395 per month.
- 5) Rent arrears began to accrue in July 2018.
- 6) As at February 2020 the arrears were £3479.

Reasons

8. This was the second CMD in connection with this application to recover arrears. The respondents did not attend but the tribunal had sight of the first respondent's email of 23 August 2020 which related to the deposit of £375 and not the arrears. The deposit was dealt with by the deposit scheme and it appeared that there was damage to the property and costs were incurred by the applicant. The tribunal had asked for clarification regarding the deposit to ascertain if it should be deducted from the arrears or not. In any event neither respondent attended the CMD. The tribunal was invited to grant an order and the tribunal initially decided to grant an order for £3084. Following on from the CMD the tribunal legal member had sight of document 7 above which contained the information requested in the direction, including confirmation that the entire deposit was returned to the applicant's agents. Those documents were not available to the legal member at the CMD. The convenor realised that in deducting the sum of £375 from the arrears, the applicant is effectively giving the respondent the benefit of the deposit twice. Mr Warburton appears to be disputing the costs incurred by the applicant, but this should have been done at the point that the deposit scheme was involved. The matter before the tribunal today is the arrears and whether the deposit was available to be applied to the arrears. It is not. The tribunal decided in accordance with the overriding objective it was in the interests of justice to grant an order for the full amount of the arrears of £3479.

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.



Lesley A Ward Legal Member

8 September 2020

Date