



**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/20/0490

Re: Property at 4 (Flat 8) Tait Wynd, Edinburgh, EH15 2RH (“the Property”)

Parties:

**Mr Gavin Dunn, Ms Stephanie Baillie, c/o Ravenstone Property Letting Ltd, 32
Rodney Street, Edinburgh, EH7 4DX (“the Applicants”)**

**Mr Jan Andersen, Ms Maria Gutierrez, 30 Shadepark Drive, Dalkeith, EH22 1DA;
30 Shadepark Drive, Dalkeith, EH22 1DA (“the Respondents”)**

Tribunal Members:

Graham Harding (Legal Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the Applicants were entitled to an order for payment
by the Respondents in the sum of £2850.00**

Background

1 By application dated 10 February 2020 the Applicants’ representatives, Lindsays, Solicitors, Edinburgh applied to the Tribunal for an order for payment in respect of alleged rent arrears arising from the Respondents’ tenancy of the property under a Short Assured Tenancy. The Applicants’ representatives submitted a rent statement and a copy of the Short-Assured Tenancy Agreement in support of the application.

2. By Notice of Acceptance dated 25 February 2020 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned to take place on 9 April 2020 and intimation given to the Applicants’ representatives and the Respondents.

3. Due to the Covid-19 outbreak the Case Management Discussion was adjourned and a further Case Management Discussion assigned to take place by teleconference on 27 July 2020.

4. By written representations submitted on 9 July 2020 the Applicants' representatives advised that the Respondents had vacated the property on or around 2 March 2020 and the arrears remained at £2850.00 and the Applicants were seeking an order for payment of £2850.00 or any other sum which remained due.

The Case Management Discussion

5. A Case Management Discussion was held by teleconference on 27 July 2020. The Applicants were represented by Mr Adam Gardiner of the Applicants' representatives. The First Respondent Mr Andersen participated in his own right and also represented the Second Respondent who was unable to attend.

6. Mr Andersen accepted that in principle there were rent arrears of £2850.00. The arrears had come about as a result of him having an accident and being unable to continue in employment. Mr Andersen went on to say that he had paid a deposit of £900.00 at the commencement of the tenancy and this had been lodged with Safe Deposits Scotland. He had thought the deposit should have been offset against the rent due but had instead been used for other claims by the Applicants. He felt that as he and his wife had lived in the property for four years and the carpets and paintwork were not new when they moved in that there was an element of fair wear and tear that should have been taken into account and therefore some of the deposit should have been used against the rent arrears.

7. For the Applicants Mr Gardiner advised the Tribunal that although the deposit had indeed been paid to the Applicants the full amount of the rent arrears was still outstanding. It would have been open to the Respondents to have challenged the return of the deposit with Safe Deposits Scotland but they had not and it was too late to raise the matter now with the Tribunal.

8. After some discussion it was established that the Applicants had claimed through Safe Deposits Scotland £150.00 for the cleaning of the property, £480.00 for legal expenses due in terms of the tenancy agreement and a further £270.00 for repairs. Mr Andersen confirmed that he had received an email from Safe Deposits Scotland detailing the Applicants' claim on 20 March 2020 and he had not disputed the claim. He accepted that as a result the full amount of the deposit had been paid to the Applicants.

9. Mr Andersen also explained that following his accident his marriage had broken down and Ms Gutierrez had left the property in March 2019. He alone had been responsible for the rent since that time. The parties confirmed that although Ms Gutierrez had moved out of the property no attempt had been made to have the tenancy transferred into Mr Andersen's sole name. Mr Gardiner confirmed that the contract remained in the Respondents' joint names and they were jointly and severally liable in terms of the contract.

10. Mr Andersen explained that he was currently on benefits and had been seeking advice on his debts from the Citizens Advice Bureau. He spoke of perhaps signing a Trust Deed or entering into an arrangement with his creditors.

11. For his part Mr Gardiner confirmed he was instructed to seek an order for payment in the sum of £2850.00. Any informal discussion amongst the parties around payment could take place once an order had been granted.

Findings in Fact

12. The parties entered into a Short Assured Tenancy that commenced on 1 December 2015 at a monthly rent of £900.00 per month.

13. The Respondents vacated the property on or around 2 March 2020. At that time there were rent arrears amounting to £2850.00.

14. The Respondents deposit of £900.00 paid at the commencement of the tenancy was paid to the Applicants to cover the cost of repairs and cleaning of the property and legal costs incurred in terms of the Tenancy Agreement.

15. Although the Second Respondent Ms Gutierrez moved out of the property in 2019 the Tenancy agreement was never assigned into Mr Andersen's sole name.

Reasons for Decision

16. Having heard from Mr Gardiner and Mr Andersen the Tribunal was satisfied that Mr Andersen had been given fair notice of the terms on which the Applicants had through Safe Deposits Scotland sought payment of the whole amount of the deposit and it was clear that none of the deposit had been intended to be used against the rent arrears. Mr Andersen could have objected to the deposit being used in this way and made use of the Scheme administrator's arbitration scheme but chose not to do so. The Tribunal was therefore satisfied that the rent arrears as shown on the rent statement and not disputed by Mr Andersen was correctly calculated and the sum due was £2850.00

17. Although it was not disputed that Ms Gutierrez had removed herself from the property in 2019 before any rent arrears had accrued no attempt had been made by either Respondent to have the tenancy transferred from the joint names of the Respondents into Mr Andersen's sole name. The original contract remained in force. Therefore the Tribunal was satisfied as a matter of law that irrespective of whether Ms Gutierrez was living in the property or not she remained liable for payment of rent.

18. The original application sought payment of the sum claimed together with interest at the judicial rate. The Tribunal does not have the power to apply interest at the judicial rate but may in terms of Rule 41A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 include interest at the rate stipulated in the tenancy agreement or as ordered by the Tribunal. The Tenancy Agreement does provide for interest on late payment at the rate of 8% per annum and given that is the case it is reasonable that the order include payment of interest at the contractual rate of 8% per annum.

Decision

19. Having heard from the Applicants representative and the Respondents and carefully considered their oral submissions and the documentary evidence provided finds the Applicants entitled to an order for payment by the Respondents in the sum of £2850.00 with interest at 8% per annum until payment.

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.

**Graham Harding
Legal Member/Chair**

**27 July 2020
Date**