



**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) 2016 Act**

**Chamber Ref: FTS/HPC/CV/21/1538**

**Re: Property at 58E Springfield Square, Bishopbriggs, Glasgow, G64 1PX (“the Property”)**

**Parties:**

**Mrs Josephine Young, 12 Burnawn Grove, Glasgow, G33 1RW (“the Applicant”)**

**Miss Stacey McFadyen, Mr Bader Mechbal, 58E Springfield Square, Bishopbriggs, Glasgow, G64 1PX (“the Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member) and Elaine Munroe (Ordinary Member)**

**Decision (in absence of the Respondent)**

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

**Background**

1. This was an application by the Applicant for civil proceedings in relation to an assured tenancy in terms of rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears. The nature of the Tenancy was one of the matters in dispute but the Applicant’s position was that there was a PRT in place by the Applicant to the Respondent commencing on 1 December 2017. (We have separately determined in a conjoined application EV/21/1537 that the Tenancy is a PRT starting on that date.)
2. The application was dated 25 June 2021 and lodged with the Tribunal on or around that date. The application was accompanied by a rent statement setting out arrears of £6,620, being sums that had accumulated from a near absence

of payments since 1 May 2020 to 30 June 2021. In the conjoined application, the lease for the tenancy detailed a rental payment of £550 payable in advance, apparently on the 1<sup>st</sup> of each month (though this was less clear for reasons explained in the decision in EV/21/1537).

## **The Hearing**

3. The matter previously called for a case management discussion (“CMD”) on 13 September 2021 at which the Applicant was represented by a solicitor and the Respondents were self-representing. Details of that CMD are in the Note prepared further to that date and are only repeated here where appropriate. At that CMD, the sum sought was amended to £8,270 for arrears to that date, but subject to deduction of a deposit of £550 held by the Applicant (as it was admitted that it had not been placed with a Tenancy Deposit Scheme).
4. On 29 October 2021 at 10:00, at a continued CMD of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, we were addressed by the Applicant’s agent, Thomas Gallagher, trainee solicitor, of Russell Gibson McCaffrey.
5. There was no appearance at the continued CMD for the Respondents. We delayed the start to 10:12 to allow late attendance, but there was no apparent attempt to contact the Tribunal or call in subsequently. We were informed that no contact had been received by the Applicant or her agents from the Respondents since the last CMD. The Tribunal’s clerk confirmed no contact had been made with the Tribunal to explain the non-appearance, and there had also been no compliance with the terms of a Notice of Direction issued to them subsequent to the initial CMD. In the circumstances, we were satisfied to consider the application in the Respondents’ absence.
6. The Applicant's agent confirmed that the application was still insisted upon. In the absence of the Respondents, we sought to review with the Applicant's agent the issues discussed at the initial CMD and the further matters which would be relevant if we were to consider granting the application at the continued CMD.

### *Retention for damages*

7. The Respondents had detailed in submissions prior to the initial CMD a period where they had been locked out of the Property. The Applicant accepted that she had changed the locks and removed some personal belongings to the exterior of the Property, on the grounds that she believed the Property abandoned. It was conceded that this had not been appropriate given the absence of either an eviction order or completion of an abandonment procedure.
8. The Respondents sought to retain £404 in respect of the rent due over the dates that they lacked access. The Applicant was provided with an opportunity (further to a Notice of Direction) to respond on this and the rest of the

Respondents' claimed retention. No response was received but the Applicant's agent conceded at the continued CMD that £404 was agreed.

9. The Respondents further retentions for alternative accommodation and damaged property were unvouched despite the opportunity to do so under the Notice of Direction.

#### *Interest and expenses*

10. The Applicant's agent sought 8% from the date of the decision. We did note that clause 4.1 of the Tenancy Agreement said: "Interest shall be paid on any instalment of rent seven or more calendar days overdue at the rate of four per cent per annum above base rate from the due date under the date of payment". The Tenancy Agreement did not disclose whose "base rate" was to be referenced.
11. No motion was made for expenses.

#### **Findings in Fact**

12. On 1 December 2017, the Applicant let the Property to the Respondents under a Private Residential Tenancy with commencement on 1 December 2017 ("the Tenancy").
13. Under the Tenancy, in terms of clause 4.1, the Respondents were to make payment of £550 per month in rent to the Applicant in advance, being a payment by the 1<sup>st</sup> of each month to cover the month to follow.
14. As of 25 June 2021, there was unpaid rent of £6,620 being made up of unpaid rent accumulated from irregular payments of rent due on the rent payment dates from 1 May 2020 to 1 June 2021 (less a payment of £500 in June 2020 and £30 paid on 23 September 2020).
15. On 25 June 2021, the Applicant raised proceedings against the Respondents for an order for payment of rent arrears of £6,620.
16. As of 13 September 2021, there was unpaid rent of £8,270.
17. The Applicant holds personally a deposit from the Respondents of £550 which she is entitled to apply against the unpaid rent.
18. The Respondents are entitled to withhold rent of £404 in respect of a period when they were locked out of the Property from 14 January to 4 February 2021.
19. The balance of rental due by the Respondents to the Applicant for the period to 13 September 2021 is £7,316.
20. The Respondent provided no evidence of payment of any part of the said unpaid rent of £7,316.

## Reasons for Decision

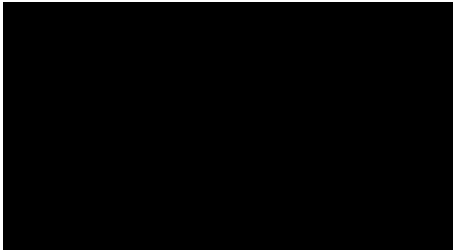
21. The application was in terms of rule 111, being an order for civil proceedings in relation to a PRT. We were satisfied, on the basis of the application and supporting papers, that rent arrears of £8,270 were outstanding as of 13 September 2021. Indeed, the Respondents did not dispute this arithmetic at the initial CMD. It was further agreed that the deposit fell to be deducted against this amount.
22. In regard to the damages for the period when the Respondents were locked out, it was a matter of agreement that they had been locked out from 14 January to 4 February 2021 and so rent for that period need not be paid. The sum of £404 was agreed upon.
23. We were unable to consider the further claims for retention for lack of vouching. We do not refuse these but cannot grant them. We do not see any grounds for holding up the determination of this application further, especially in the absence of an appearance by the Respondents at the continued CMD. The Respondents remain free to raise a separate application for any damages they seek, but the Applicant is entitled to determination of the rent due to date. The balance of sums due is £7,316 to 13 September 2021.
24. As the application clearly set out the sums, we were satisfied that the necessary level of evidence for such civil proceedings had been provided. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and we were satisfied to make a decision at the CMD to award the sum of £7,316 against the Respondents.
25. We were satisfied that it was appropriate to award interest from the date of Decision at the judicial rate of 8%. We are entitled in terms of Procedure Rule 41A to award at a rate in the Tenancy Agreement or as we order. The Tenancy Agreement is not entirely clear but would permit a substantial period of back interest. We opt to grant the Applicant's motion for judicial interest of 8% from the date of Decision only.
26. We note that the application was limited to the rent arrears due under the lease to 13 September 2021 and this Decision does not preclude any future application by the Applicant in regard to any further claim under the lease against the Respondent regarding any other potential breach of the lease or arrears for any later period. Further, as we say, it does not preclude the Respondent to seek to advance any claim for damages for the period 14 January to 4 February 2021 (other than the reduction in rent which we have determined in full in their favour at the sum of £404).

## Decision

27. In all the circumstances, we were satisfied to make the decision to grant an order against the Respondents for payment of £7,316 with interest at 8% per annum running from today's date.

## 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/Chair

29 October 2021

Date