



**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/21/1945**

**Property : 17 Harley Street, Rosyth KY11 2ND (“Property”)**

**Parties:**

**Mark Buchan, 162 Primrose Avenue, Rosyth KY11 2TZ (“Applicant”)**

**Donna Logan, 17 Harley Street, Rosyth KY11 2ND (“Respondent”)**

**Tribunal Members:**

**Joan Devine (Legal Member)**

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

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined that an order for payment of £3,150 should be made.**

**Background**

The Applicant sought an order for payment of £4,175 in respect of arrears of rent and in respect of a deposit stated to have been paid by the Applicant on behalf of the Respondent. The Applicant had lodged Form F. The documents produced were: a Tenancy Agreement dated 1 October 2020; an email from the Applicant to the Respondent regarding an increase in rent; an excerpt from the Applicant’s bank account showing payments received; an excerpt from a bank account showing payment of £575 to My Deposits Scotland on 30 October 2020; a copy letter from the Applicant to the Respondent dated 17 November 2021 regarding rent arrears; copy text messages regarding a deposit; copy unsigned minute of agreement between the Applicant and Alana Buchan regarding separation (“Separation Agreement”); written representation from the Respondent dated 31 December 2021 and sheriff officer’s execution of service certifying service of the Application on 15 December 2022.

**Case Management Discussion**

A case management discussion took place before the Tribunal on 20 April 2022 by teleconference. In advance the Respondent had told the Tribunal that she would not attend due to various medical conditions. The Applicant was in attendance.

The Tribunal noted that title to the Property had been in the name of the Applicant and Alana Buchan and that in terms of the Separation Agreement title had been transferred to the Applicant alone. The Tribunal noted that a tenancy agreement had previously been in place between Alana Buchan and the Respondent although no copy had been produced. The Applicant said this had been in place from 2018 to October 2020. The Tribunal noted that the tenancy agreement between the Applicant and the Respondent commenced on 1 October 2020. The Tribunal noted that it was in the form of a short assured tenancy and asked the Applicant if he was aware that since 1 December 2017 short assured tenancies could no longer be created in Scotland and instead private residential tenancies were to be used in terms of the Private Housing Tenancies (Scotland) Act 2016 ("2016 Act"). The Applicant said that he was not aware of that.

The Tribunal then asked about the sums claimed and noted that the rent in terms of the tenancy agreement was £575 per month. The Tribunal noted that a copy email had been produced in which the Applicant sought to increase the rent to £625 per month from 25 February 2021. The Tribunal asked the date of the email. The Applicant said it was sent in February 2021. The Tribunal asked the Applicant if he was aware of the terms of section 22 of the 2016 Act which required 3 months' notice to be given of a rent increase and if he was aware that a specific form of notice required to be given to the Respondent. He said that he was not aware of either.

The Tribunal reviewed the sums claimed in respect of rent along with the excerpt from a bank statement showing sums received and expressed the view that whilst the Applicant was entitled to recover rent at the rate of £575 per month for March 2021 and June to October 2021 he was not entitled to recover rent at the higher rate of £625.

As regards the sum of £575 claimed in respect of a deposit paid, the Tribunal noted that at page 4 of the Separation Agreement it seemed to be envisaged that deposits held by Alana Buchan would be passed to the Applicant when title to various properties were transferred. The Tribunal also noted that the submission from the Respondent was that the Applicant had taken it upon himself to pay the deposit and that she had not asked him to do that. The Applicant said that what was meant to happen was that the Respondent would reclaim her deposit that had been paid to Alana Buchan and then pay it to the Applicant. He said that the deposit had been paid by the Respondent to Alana Buchan in cash and had not been lodged with an approved scheme.

The Applicant said that the Respondent had vacated the Property on 11 January 2022. The Tribunal asked the Applicant if he let any other properties. He said that he let three other properties and at one time had let nine properties. The Tribunal suggested that he familiarise himself with the regulatory regime governing the private rented sector in Scotland.

## **Findings in Fact**

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent had entered into a Tenancy Agreement for the Property which commenced on 1 October 2020.
2. The rent in terms of the Tenancy Agreement was £575 per month.
3. The Respondent have failed to pay the rent in full for the period 1 March to 1 October 2021 totalling £3,150.

## **Reasons for the Decision**

The Tribunal determined to make an Order for payment of £3,150. Rent was due in terms of the Tenancy Agreement at the rate of £575 per month and had not been paid in full for the period 1 March to 1 October 2021 and totalled £3,150. The Applicant had sought to increase the rent to £625 per month but had not issued the appropriate form of notice or given sufficient notice in terms of section 22 of the 2016 Act. The Applicant is not entitled to recover rent at the rate of £625 per month. The Applicant sought recovery of £575 in respect of a sum paid by the Applicant to My Deposits Scotland. The Tribunal could see no basis in law for the Applicant to recover that from the Respondent. The paperwork provided did not support such a claim.

## **Decision**

The Tribunal grants an order for payment of £3,150.

## **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.**

Joan Devine

**Legal Member**

**Date : 20 April 2022**