



**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/21/1682

**Re: Property at Blacket Mews, Flat 1, 1 Minto Mews, Edinburgh, EH9 1AB (“the
Property”)**

Parties:

**Dancourt Properties Limited, c/o Ben Property, 3 Manor Place, Edinburgh, EH3
7DH (“the Applicant”)**

**James-Earl Leonard Kolleh-McBorrough, Blacket Mews, Flat 1, 1 Minto Mews,
Edinburgh, EH9 1AB (“the Respondent”)**

Tribunal Members:

George Clark (Legal Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that the application should be decided without a
Hearing and made an Order for Payment by the Respondent to the Applicant of
the sum of £22,500.**

Background

By application, received by the Tribunal on 13 July 2021, the Applicants sought an Order for Payment in respect of unpaid rent that had become lawfully due by the Respondent to the Applicant. The sum sought was £18,000.

The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 3 March 2020 at a rent of £1,500 per month and a Rent Statement showing arrears as at 7 July 2021 of £18,000. The arrears had commenced on 3 August 2020. The rent due on that day had not been paid and no rent had been paid since then.

On 5 August 2021, the Tribunal advised the Parties of the date and time of a Case Management Discussion, and the Respondent was invited to make written

representations by 23 August 2021. The Respondent did not make any written representations to the Tribunal.

On 19 August 2021, the Applicant's representatives provided the Tribunal with an updated Rent Statement showing arrears as at 17 August 2021 of £19,500, and requested permission to increase to that sum the amount sought.

First Case Management Discussion

A Case Management Discussion was held by means of a telephone conference call on the afternoon of 8 September 2021. The Applicant was represented by Mr Joshua Bahru of Gilson Gray LLP, Edinburgh. The Respondent was present.

The Respondent told the Tribunal that he accepted that the rent had not been paid, but stated that, in January 2021, he had applied to the Scottish Government for a loan under the Tenant Hardship Loan Fund to enable him to pay the rent from August 2020 until March 2021. This application had, however, been withdrawn by the Scottish Government because the Applicant had failed to register as a landlord on the Landlord Register. The Tribunal asked the Respondent to explain why he had not paid any rent after March 2021, when the period covered by the loan, had it been granted, would have run out. He answered that he had had a number of family bereavements and had required to support two younger siblings to complete their full-time education. He also stated that he had had conversations with the letting agents and with Miss Danielle Wallace, whose family own the Property, and that both were fully aware of the issue regarding the Tenant Hardship Loan Fund and the Respondent's personal circumstances. Miss Wallace had offered to write off the rent arrears if the Respondent was prepared to vacate the Property.

Mr Bahru told the Tribunal that he was unaware of the circumstances surrounding an application to the Tenant Hardship Loan Fund and pointed out that not a penny had been paid for more than a year.

The Tribunal decided to continue consideration of the application to a further Case Management Discussion and to issue a Direction to the Applicants to provide details of the date on which the Applicants were registered as a landlord in the Landlord Register and a Direction to the Respondent to lodge with the Tribunal, not less than two weeks before the date of the continued Case Management Discussion, copies of all letters, emails, text messages and other documents on which he intended to rely in relation to his application for a loan under the Scottish Government's Tenant Hardship Loan Fund and in relation to his communications with the Applicant and the Applicant's letting agents. The Tribunal stressed to the Respondent that, if the reason for his not being successful in his application to the Tenant Hardship Loan Fund was not solely a failure on the part of the Applicants to register as landlords in the Landlord Register and was in any way attributable to the Respondent's personal circumstances, the Tribunal would disregard that application in arriving at its final Decision. The Tribunal proceeded to issue the Directions to the Parties.

On 17 September 2021, the Applicant's agents, Gilson Gray LLP, Edinburgh, provided written representations to the Tribunal. These included a timeline, with supporting email evidence, that the Applicant's letting agents had, in December

2020, made the Respondent aware of the Tenant Hardship Loan Fund. On 12 January 2021, the administrators of the Fund contacted the Applicant's letting agents, highlighting issues with the Applicant's landlord registration and querying the Property address, as it appeared that the landlord registration for the Property was missing from the Scottish Landlord Register. On the same day, the agents confirmed the landlord's registration number and advised that the address listing might be an error on the part of City of Edinburgh Council, as the development of which the Property forms was new but was mixed in with an old development. On 4 February 2021, the landlord's agents confirmed that the landlord's solicitors had been attempting for some time to have the Property registered but due to a hold up in the local authority's response, the agents asked if the application to the Tenant Hardship Loan Fund could progress with any evidence that could be provided. On 10 May 2021, the landlord's agents confirmed to the administrators of the Fund that the Property was now registered but were told in response that the Fund no longer had a "live" application.

The Applicant's solicitors contended that it was not conclusive that the application to the administrators of the Fund had failed as a result of the registration issues, It appeared that the Fund was aware of the issues and responsive in trying to allow the landlord to have the issues resolved. No intimation of any default on the landlord's part had been made, and the Applicant's submission was that this issue was not the sole reason for the application being withdrawn.

The Applicant's solicitors provided copies of various emails in support of their position. They included copies of email exchanges with the office of the Lord Provost of Edinburgh, seeking his help in securing registration of the Property on the Register. These emails indicated that the landlords had first sought registration in December 2019 and that there had been regular email correspondence with the Council and with the Scottish Landlord Register staff between then and April 2021.

The Respondent did not provide the Tribunal with any additional information, following the issue of the Tribunal's Directions.

On 11 October 2021, the Applicant's solicitors sought leave to amend the application to increase the amount sought to £22,500

Second Case Management Discussion

The second Case Management Discussion took place by means of a telephone conference call on the morning of 25 October 2021. The Applicant was again represented by Mr Bahru. The Respondent did not participate and was not represented. Mr Bahru asked the Tribunal to make an Order for Payment of the sum sought in the application, as amended to £22,500, without a Hearing.

Reasons for Decision

Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.

The Tribunal considered carefully all the evidence before it. The Respondent had insinuated at the first Case Management Discussion that the landlord was not registered on the Scottish Landlord Register. That had been an important reason for the Tribunal's decision to adjourn the Case Management Discussion pending clarification. It was now clear to the Tribunal that the landlord had been registered and that the issue had been that the Property itself was not registered when the Respondent made an application to the Tenant Hardship Loan Fund. The Tribunal was satisfied that the landlord and the landlord's agents had been trying to have it registered as early as December 2019 and had persisted in their attempts to have the Register updated, eventually, as last resort, contacting the Lord Provost directly for help. The Tribunal decided, therefore, that the Applicant and the Applicant's agents had not been at fault in the failure to register the Property. It was, in effect, a new address and the delay in dealing with the registration had not been shown to be attributable to any act or omission on the part of the Applicant or the Applicant's agents. It was the Applicant's letting agents who had signposted the Applicant to the Tenancy Hardship Loan Fund and, on the basis of the evidence before it, the Tribunal could not hold that the delay in providing evidence of the Property being registered on the Scottish Landlord Register had been the only, or principal, reason for the application to the Tenant Hardship Loan Fund not being active on 10 May 2021. The Respondent had been directed to provide the Tribunal with copies of all letters, emails, text messages and other documents on which he intended to rely in relation to his application to the Tenant Hardship Loan Fund but had failed to do so.

The Tribunal was satisfied that the landlord had been registered in the Scottish Landlord Register when the Respondent made his application to the Tenancy Hardship Loan Fund and that the Applicant and the Applicant's agents had taken all the steps they reasonably could to register the Property on that Register. Accordingly, the sum sought, as amended, had become lawfully due by the Respondent to the Applicant and the application, as amended, for an Order for Payment should be granted.

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.

George Clark

Legal Member/Chair

Date: 25 October 2021