



**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/18/0942**

**Re: Property at 5 Forties Crescent, Glasgow, G46 8JS (“the Property”)**

**Parties:**

**Dr Wan Hock Cheah, 19 Glenpark Avenue, Glasgow, G46 7JE (“the Applicant”)**

**Ms Hina Noor, 5 Forties Crescent, Glasgow, G46 8JS (“the Respondent”)**

**Tribunal Members:**

**Melanie Barbour (Legal Member) and Elizabeth Currie (Ordinary Member)**

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

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

**Background**

An application was made to the First Tier Tribunal for Scotland (Housing and Property Chamber) under Rule 70 of the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 Rules”) seeking an order for payment of rent arrears amounting to £2383.091 in relation to an assured tenancy for the property.

There had been two previous case management discussions which had taken place 17 July and 14 August 2018. The parties were in dispute as the Respondent stated that she had paid rent and disputed that any arrears were due. Each party had lodged handwritten rent books which they claimed were evidence of their position. Given the level of dispute between the parties the case management discussion on 14 August 2018 referred the case to a hearing to assess the credibility and reliability of the evidence.



The papers before the hearing consisted of

- the Application of 19 April 2018
- Email from the Respondent's Solicitors dated 6 August 2018 with rent book, receipt from the Bank of Scotland and payment schedule stamped
- Case management notices
- Directions
- Copy tenancy agreement
- Letter from Glasgow City Council dated 2 August 2018 to the Respondent listing Housing benefits payments for the Property from 20 March 2017 until 25 March 2018.
- The Applicant had also recently lodged Productions 1-15

The Applicant appeared by himself. The Respondent appeared with her solicitor, Mr Murray and Ms Lamont as a supporter.

### The Hearing

The Applicant advised that he had served a notice to quit with a date to leave the Property of 25 March 2018. The Respondent had not left the property for some time after that date on 22 July 2018, after he had lodged an application with the Tribunal to seek an eviction order.

He advised that he was not seeking any payments from the Respondent in relation to the period after 25 March 2018 as he had a separate application in the Tribunal dealing with this matter.

The Applicant made reference to production 4A of his original application which was he advised his rent book. He advised that rental payments were made by the client's direct. He collects cash payments from the tenants in all but two of his tenancies (the other two pay by direct debit).

He advised that he knew the Respondent before she took the tenancy and he would meet in her house, or various other places in Shawlands when he would collect rent from her. He advised that he would go to her house and as housing benefit is paid four weekly he would meet her every four weeks to collect the rent when she received her housing benefit.

There were no signatures in the rent book, he advised that he had given the tenant an identical rent book to his own, and when he received a payment he would mark each book up. He stated that he signed her book, however there is no evidence of this as this book was not lodged with the Tribunal. He advised that he did not get the Respondent to sign anything.

He advised that he has rented properties for 30 years and he rents out 8/9 properties. This is the standard way in which he operates. He has not had a problem with operating in this way for a long time.

He advised that two tenants pay money direct to an account but normally he gets paid money directly to him at the end of the month,



He advised that he does not have rent books for all his tenants, he only has rent books for the ones that he considers to be "dodgy" and he needs to give them a rent book.

The Respondent advised that she had never been given any receipts of payment. He would ask her for payment, and then he began to confuse her with payment requests. She advised that she would write the payments she had made in the rent book which she had lodged with the Tribunal.

The Applicant advised that the payments were to be made per month, however full monthly payments were not made, and the Respondent had never paid her full rent. He advised that the Respondent had not paid her first month's rent.

The Applicant advised that he had believed that the lease would have been in the joint names of the Respondent and her partner, but this had turned out not to be the case. He was unhappy as he stated that she was in "on-going arrears".

He advised that the tenancy agreement was a short assured tenancy and at the end of the 6month period he served a notice to quit, however she refused to leave the tenancy, and on 27 November the respondent's brother made a payment towards the arrears of £700 into his bank.

The Applicant advised that the Respondent had been evicted from her last property; he had known her and advised her that the landlord needed a court order to get a tenant out, and he believed that the Respondent was now using this advice against him when she refused to move out of the Property.

Production 14a was the notice to quit which the Applicant had served on the Respondent.

Production 14b was a copy of a letter which he had written to the Respondent's solicitor advising him that she required to pay her rent.

The Respondent's agent advised that he had acted for the Respondent for a while, and he advised that the Respondent left her previous tenancy as the landlord's daughter wanted the house back. He indicated that the letter from the Applicant (14b) was requested to ensure continuity of housing benefit as a change from one house to another. The letter was dated 16 February and noted that the tenancy was going to start on 7 March 2017.

He advised that the previous tenancy the housing benefit was paid direct to the landlord.

The Respondent advised that she had wanted housing benefit to be paid direct to the Applicant. However the Applicant did not want it paid direct.

The Applicant confirmed that this was correct and he had requested that it not be paid direct.



The Respondent advised that the housing benefit was therefore paid direct into her bank account with the additional rent due being made up by her.

The Applicant confirmed that a tenancy deposits had been paid for this property in terms of the tenancy agreement between him and the Respondent. It had been paid by a third party, Ms Noor's partner.

The Respondent advised that she became confused about rent payments as the Applicant had showed her another rent book and she was confused by this. The rent book which she knew was the rent book which she had lodged.

The respondent advised that her rent book showed payment which had been made each month for £460.

The Respondent advised that the £700 which had been paid by her brother, was paid as benefits had been going up and down. She stated that she always paid her rent. She advised that the Applicant kept advising her that she owed more money.

The Respondent advised that she would top up rent with benefits and she not always paid four weekly. Housing benefit sometimes not arriving on the due date and sometime she had to top up the balance, and then she was told more money outstanding as the rent was £498 per calendar month.

The Applicant disputed this, that the Respondent was paying her rent every month.

The Respondent noted that there were no dates on her rent book payment other than per month

Reference was made to the production 4a of the original productions showing rental payments made as noted by the Applicant. In September there were three payments of 420, 100 and 460. The Respondent was asked if she could advise why her rent book stated that only £460 had been paid in September, when it appeared that the Applicant was saying that there had been £980 paid that month over three dates.

The Respondent advised that she did not know anything about this and she was confused about this.

The Applicant advised that he would be out and would ask for the rent arrears to be paid back and therefore he would sometimes see the Respondent more often than every four weeks. He would text her and call her to try and make arrangements to get the arrears paid.

Reference was made to the letter from Glasgow City Council dated 2<sup>nd</sup> August 2018 showing the housing benefits paid made for the Property. It was noted that there was no payment of housing benefit in October and then a payment of £736 on 18 November 2018. The Respondent was asked if she had an explanation for why there was still a payment of £460 noted by her for October.

The Respondent advised that she was not sure how there was payment for October.





The Respondent's agent advised that there is a difference narrative in the two rent books, the Respondent's does not show dates and he considered that this made the book more authentic, as he considered that it showed that the notes had been made contemporaneously when the rent payments were made.

The Respondent was also in receipt of benefits which changed over the year ESA and PIP and he was not sure they had been paid on a regular basis with some benefits paid every month. He advised that the Respondent's other benefits made up the shortfall in the rental payments.

With regard to today's application he advised that it was his client's position that there was no rent arrears due.

The Applicant advised that he had not made up the rent book. Any tenant had a written rent book. The Respondent had texted him many times to pay rent and then nothing was paid. He advised that the Respondent was not telling the truth.

#### Findings in Fact

That a tenancy agreement existed between the parties which commenced on 3 March 2017.

That rent was payable in advance of £498 per month.

That a deposit had been paid in relation to the tenancy of £498.

That the deposit had not been paid into a tenancy deposit scheme.

That the Respondent was in receipt of housing benefit which had been paid direct to her.

That there had been payments of rent to the Applicant as shown on his application.

That they had been one payment direct to the Applicant made by Glasgow City Council for a final housing benefit payment £78.91.

#### Reasons for Decision

The credibility and reliability of both witness was difficult to assess in this case.

The Applicant who by his own admission is an experienced landlord of over 30 years, could produce no independent verifiable documentation showing what payments had been made to him in relation to the tenancy.

He also was unclear on what basis rent was paid from respondent, he appeared to have no proper accounting and reporting procedures in place to show what rent was being for what property, he went as far as to say for some of his tenancies he had no



rent book at all; which would make any assessment of liability extremely difficult, if not impossible, to do .

He did however submit a rent book for this Property and which had various payments listed in it ,and two payments one from a niece and one from the Respondent's brother which had been paid into a bank; and which in the brother's case was evidenced by the Respondent. The Applicant did therefore agree that there had been payment made to rent albeit in his submission not for the full sum. He submitted that the Respondent had constantly misled him about rent and had never paid on time.

The Respondent presented as rather confused about the rent books and what payments were made. In her submission it was noted that she had been in receipt of housing benefit, which was (at the request of the Applicant) paid direct to the Respondent, she advised that she had become confused over the rent book and what payments were due.

We have some sympathy for her position as we consider it would have been of much greater assistance to the Respondent had housing benefit been paid direct to the Applicant. This would have allowed the Respondent to more easily manage to ensure that the balance was paid.

The rent book presented by the Respondent, however in the Tribunal's opinion lacked credibility. The Respondent was unable to explain why she had noted only one payment for September, when in fact three had been noted by the Applicant; the Respondent had also noted that that she had made a payment in October, however housing benefit had not been paid to her that month.

While the Tribunal noted that she may have been getting other benefits which may have been put to rent arrears, there was no evidence presented in support of this fact. In fact the solicitor for the Respondent said it had not been possible to do such reconciliation. The Respondent had however given evidence that she had been paying the rent when she was paid housing benefit.

Given that Respondent said that the Applicant was always asking for money, there appears some truth in this, and this would support what the Applicant said about contacting her to have rather rent and arrears repaid. We can therefore understand that the Respondent may also have become confused.

The rent book provided by the Applicant, would appear to be more akin to and more closely match the housing benefit payments which were made to the Respondent and also, to the evidence provided by both parties as whole.

I note that a deposit was paid to the Applicant for this tenancy. Given that a deposit was paid to the Applicant for this tenancy and this deposit has not been paid back it should be deducted from the arrears due.

(The Tribunal would also note that it considers that this deposit should have been placed in the tenancy Deposit Scheme and we were very surprised when the Applicant advised that he has never placed any of his deposits into such schemes.



As advised by the Tribunal this is contrary to the governing Tenancy Deposit Scheme Regulations and he should consider the obligations arising from these regulations as a registered landlord. These regulations exist to protect both parties and penalties exist for non-compliance.)

The tenancy agreement however created obligations between the parties, one of those obligations was to pay rent, and as it appears to the Tribunal that the Respondent failed to pay full rent, then therefore we find that there are rent arrears outstanding.

As the Tribunal finds the arrears due, but that the Applicant is currently holding a deposit of £498, the Tribunal finds the Respondent liable to repay the sum of £1885.09.

On the basis of the evidence submitted, we consider that we should make an order for the sum sued for less the value of the deposit and less the housing benefit paid direct to the Applicant.

### Decision

We grant an order in favour of the Applicant for ONE THOUSAND EIGHT HUNDRED AND EIGHTY FIVE POUNDS AND NINE PENCE (£1885.09) STERLING against the Respondent

### **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.**

MELANIE BARBOUR

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**Legal Member/Chair**

4. 9. 18  
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**Date**

