



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 (1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/23/1132

Re: Property at 932 Dumbarton Road, Flat 2/3, Glasgow, G14 9UQ (“the Property”)

Parties:

Mr Mattia Foschetti, Miss Silvia Spaltro, 34 Nethercairn Road, Flat 2/2, Glasgow, G43 2AA; 34 Nethercairn Road, Flat 2/2, Glasgow, G43 2AA (“the Applicant”)

Mr Keith Marshall, 69 Clouston Street, Flat 1/1, Glasgow (“the Respondent”)

Tribunal Members:

Andrew McLaughlin (Legal Member)

Decision

[1] The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted the Application and made a Payment Order in favour of the Applicants in the sum of £400.00.

Background

[2] The Applicants seek the sum of £400.00 which they say ought to be refunded to them because they were unlawfully subjected to an increase in their rent which they had paid to the Respondent. The sum sought reflects the total sums paid as a consequence of the rent increase. The Application is accompanied by a copy of the tenancy agreement and text message communications between the parties. The Respondent has submitted representations.

The Case Management Discussion

[3] The Application called for a Case Management Discussion (CMD) by conference call at 10 am on 20 December 2023. The parties were all present. Neither party had any preliminary matter to raise.

[4] The Tribunal discussed with parties that the Respondent appeared to have informed the Applicants by text message on 27 September 2022, that their rent was to increase from £595.00 to £675.00 per month. This increase was to come into effect from 1 November 2022. The Applicants' position is that they were unlawfully charged an extra £80.00 per month for five months before they moved out on 3 April 2023. The Respondent accepted that he had been ignorant of the law and more particularly *The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017* which prescribes a mandatory rent increase notice and also the terms of the *Cost of Living (Tenant Protection) (Scotland) Act 2022* which imposes strict controls on rent increases. The Respondent accepted that he had not acted in compliance with these legislative requirements but was keen to point out that he considered himself to be generally a fair and reasonable landlord.

[5] The Respondent was calling from abroad and dropped out of the call after having set out his position. The Tribunal allowed time for the Respondent to re-join. The Tribunal then adjourned until 10.30am to allow the Respondent further time to join. No further contact was heard from the Respondent. The last thing he had said before leaving the call was asking about "time to pay".

[6] The Tribunal considered the overriding objective to deal with matters efficiently and fairly and having heard from parties, made the following findings in fact.

Findings in Fact

- I. *The Applicants let the Property from the Respondent under a Private Residential Tenancy Agreement between the parties;*
- II. *The Respondent informed the Applicants by text message on 27 September 2022 that their rent was being increased from £595.00 to £675.00;*
- III. *This increase was to come into effect from 1 November 2022;*
- IV. *The increase charged was unlawful when considering the terms of The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 which prescribes a mandatory rent increase notice and also the terms of the Cost of Living (Tenant Protection) (Scotland) Act 2022 which imposes strict controls on rent increases;*

V. *The total sum of £400.00 was therefore paid by the Applicants to the Respondent without legal justification.*

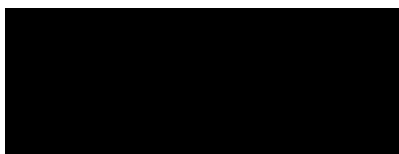
Reasons for Decision

[7] Having made the above findings in fact, the Tribunal considered that the sum of £400.00 ought legally to be returned to the Applicants under the law of unjustified enrichment, as the sums were paid without proper legal cause and in error. Consequently, the Tribunal granted the Application and made a Payment Order in favour of the Applicants in the sum of £400.00.

[8] The Respondent can apply to the Tribunal for a Time to Pay Order in the usual manner should he wish. Any such Application ought to include full vouching of his financial position and ability to pay.

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

20 December 2023

Date