



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 70(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/24/1723**

**Re: Property at Room 1, 2/7 (otherwise 3F1 2) Parkside Terrace, Newington, Edinburgh, EH16 5BN (“the Property”)**

**Parties:**

**MD Edinburgh Investments Ltd, 20 Nicolson Street, Edinburgh, EH8 9DH (“the Applicant”)**

**Mr Harry Scott Donaghy, Flat 1, 9 Dalry Gait, Edinburgh, EH11 2AU (“the Respondent”)**

**Tribunal Members:**

**Ruth O'Hare (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to make an order for payment in the sum of Two thousand five hundred and seventy three pounds and twenty seven pence (£2573.27) Sterling**

**Background**

1. By application to the Tribunal the Applicant sought an order for payment against the Respondent in respect of unpaid rent arrears and costs in the sum of £2573.27 under Rule 111 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the 2016 Act”). In support of the application the Applicant provided a copy of the tenancy agreement between the parties and a rent statement.
2. By Notice of Acceptance of Application a Legal Member of the Tribunal with delegated powers of the Chamber President intimated that there were no grounds on which to reject the application. The application was therefore

referred to a Case Management Discussion (“CMD”) on 3 December 2024, to take place by teleconference. Notification was sent to the parties in accordance with Rule 17(2) of the Rules of Procedure. Said notification together with a copy of the application paperwork was served upon the Respondent by Sheriff Officers. Both parties were invited to make written representations in advance of the CMD.

3. On 27 August 2024 the Tribunal received written representations from the Applicant’s representative with vouching for the costs sought under the terms of the tenancy agreement between the parties.

### **The Case Management Discussions**

4. The first CMD took place on 4 September 2024. The Applicant was represented by Mr David Gray of Gilson and Gray Solicitors. The Respondent was in attendance. For the avoidance of doubt the following is a summary of what was discussed at the CMDs and does not constitute a verbatim account of the proceedings.
5. The Tribunal explained the purpose of the CMD and asked parties to address her on their respective positions.
6. Mr Gray advised that the Applicant sought an order for payment in the sum of £2573.27, being arrears of £1497.20 and costs of £748.60.
7. The Respondent advised that he wished to put forward some reasons to at least mitigate the sum sought by the Applicant. He was unsure as to why the additional costs were being sought. He believed that the Applicant and his agent had violated the letting agent code of practice and landlord code of practice. There was a build up of black mould in his bedroom that he had made the landlord and agent aware of on multiple occasions that had affected his health. The landlord had also threatened to sue him at one point, having accused him of occupying the property unlawfully after a notice to leave had been served. The landlord’s agent had told him that he would be liable to reimburse the landlord for loss of rent and third party contractor fees. The Respondent felt that was unreasonable and an attempt to intimidate him.
8. The Respondent explained that he had also been told by the landlord’s agent that if he went to the Tribunal it would lead to difficulty renting in future and affect his credit score. He felt that the landlord’s agent had not acted appropriately and that he should therefore be entitled to a reduction in the rent owed. In response to questions from the Tribunal the Respondent explained that he had sought advice from Shelter previously when he was told that he would have difficulty renting in future, and when told that he would be legally liable for the costs incurred in leaving the property. He confirmed that he had not taken any advice regarding the present application. He had been trying to get through to Shelter but had not been able to.

9. Mr Gray stated that his firm had not been in contact with the Respondent at any point.
10. The Legal Member thereafter determined to adjourn the Case Management Discussion to give the Respondent a final opportunity to take legal advice to ascertain whether he has any valid defence to the application. Mr Gray intimated that he had no objection to this in theory, but did have concerns about the fact that the Respondent had not taken advice previously and there appeared no dispute that the rent arrears did exist, only that due to certain circumstances there was a feeling that they should be reduced or mitigated. The Legal Member noted this but determined that an adjournment would not be prejudicial to the parties in this particular case.
11. A Direction was subsequently issued requiring the Respondent to submit his proposed defence in writing by 1 November 2024.
12. On 18 November 2024 the Tribunal received an email from the Applicant's representative with copy email correspondence between Applicant's letting agent and the Respondent between 13 June 2023 and 7 July 2023, invoices dated 16 November 2023 and 20 February 2024 for repairs to the radiator and treatment of mould, and an email from the Respondent dated 11 April 2024 confirming his liability for the rent arrears.
13. On 26 November 2024 the Tribunal received an email from the Respondent with his written statement of defence to the application. In summary the Respondent's position was that it would be unreasonable for a payment order to be granted in this case due to the condition of the property and the conduct of the Applicant and his representatives. There was black mould on various occasions which affected the Respondent's asthma. The Applicant had also violated the "Landlord Code of Practice" and the Letting Agent Code of Practice by acting in an intimidating manner. In particular the Applicant's letting agent had advised the Respondent that an application to the Tribunal would affect his credit score and ability to rent in future. The Applicant's representative had also contacted the Respondent and had told him he was occupying the property unlawfully which wasn't true. They had threatened to sue the Respondent for costs incurred by third party contractors and loss of prospective rent from other potential tenants. The Respondent considered that it would therefore be unreasonable for the Applicant to request payment of the rent arrears given that the arrears had accrued under a contract which assumes the Applicant is compliant with their duties in terms of making the property liveable and not harassing tenants.

14. The second CMD took place on 3 December 2024. The Applicant was represented by Mr Scott Runciman of Gilson Gray. The Respondent was in attendance.
15. The Tribunal noted that the Respondent had submitted a written statement of his defence on 26 November 2024, which was after the deadline stated in the Direction. The Respondent advised that he had not been aware of the deadline, and understood that he had to submit any written representations at least seven days prior to the CMD.
16. Mr Runciman noted that the statement of defence had been received late. He had reviewed the statement and noted a number of irrelevant points. The Respondent had made reference to the conduct of the landlord and the letting agent, with reference to the letting agent code of practice. Mr Runciman advised that this would not factor into an argument about rent arrears. The defence therefore appeared to be that there were instances of mould at the property. However the Respondent had lodged no evidence to substantiate this. Whilst Mr Runciman accepted that such evidence may come at a later date, he would have expected the Respondent to lodge something in support of his defence. Furthermore, the defence was contrary to the position expressed by the Respondent in an email to the Applicant's letting agent on 11 April 2024, in which the Respondent stated that the arrears would be paid. There had been no mention of withholding rent, or abatement of rent, due to mould. This had come as a surprise to the Applicant. Mr Runciman referred to the invoices submitted which confirmed that works had been carried out. There remained however an obligation on the Respondent to properly heat and ventilate the rooms. Mr Runciman did not believe the statement amounted to an arguable defence.
17. The Tribunal heard from the Respondent. He confirmed that his defence to the application was the unreasonable behaviour of the Applicant and his letting agent, and the failure to maintain the property in a good state of repair. The Respondent would have expected the Applicant to have complied with his duties under the repairing standard. The Respondent acknowledged that he had not previously made a repairing standard application to the Tribunal and had not informed the Applicant that he was withholding his rent. The issue with the mould was not substantial until sometime after summer 2023. It got particularly bad in October and November 2023. The Respondent had made the Applicant aware of this.
18. The Tribunal noted that the Respondent had paid rent on a regular basis up until January 2024, despite his assertion that the mould issues had persisted since 2022. The Tribunal asked why the rent stopped in January. The Respondent advised that he had been having financial difficulties and stopped paying the rent. However, after the Applicant had requested repayment of the arrears he felt this was a bit unjust given the state of the property.

## **Findings in Fact**

19. The Applicant and Respondent entered into a tenancy agreement in respect of the property which commenced on or around 28 July 2022.
20. In terms of Clause 8 of the said tenancy agreement the Respondent undertook to pay rent of £460 per calendar month.
21. The tenancy between the parties terminated on or around 30 April 2024.
22. As at the date of termination arrears in the sum of £1824.67 were outstanding.
23. The Respondent ceased payments of rent in January 2024 as a result of experiencing financial difficulties. The Respondent could not afford the rent. The last payment to the rent account was received on 15 January 2024.
24. The Respondent acknowledged in an email to the Applicant's letting agent on 11 April 2024 that he would "work to pay the arrears".
25. In terms of Clause 37 of the said tenancy agreement the Respondent agreed that the Applicant would be entitled to pursue him for all costs incurred as a result of unpaid rent including, but not limited to, the recovery of legal costs and expenses.
26. The Applicant has incurred costs amounting to £748.60 in pursuing the Respondent for the unpaid rent.

## **Reasons for Decision**

27. The Tribunal determined that it had sufficient information upon which to make a decision at the CMD and that to do so would not be contrary to the interests of the parties. The Tribunal did not identify any substantive issues to be resolved that would require a hearing to be fixed in this case.
28. The Tribunal considered whether the Respondent had an arguable defence in this case.
29. With regard to the reasonableness of the conduct of the Applicant and his letting agent, in terms of the allegations of intimidation and threats, the Tribunal was not persuaded that this was a valid defence to the application. The Respondent had made no allegations against the Applicant themselves, the incidents referred to in his written statement of defence referred to communications between the Respondent and the Applicant's letting agent, and the Applicant's representative who had been instructed by the letting agent. If the Respondent considered that the Applicant's agent had behaved in a way that could be construed as intimidating and threatening, the appropriate remedy would be an application to the Tribunal alleging breaches of the Letting Agent Code of Conduct. However insofar as this application is concerned the allegations outlined did not amount to a defence to a claim for rent arrears.
30. With regard to the allegations of disrepair, the Respondent had accepted that he had not made a repairing standard application to the Tribunal at any point

during the tenancy, nor had he intimated to the Applicant that he was withholding his rent. He had conceded at the CMD that his reason for ceasing the rent payments was due to financial difficulties. He had accepted in correspondence with the Applicant's letting agent that the arrears were due. The Tribunal could not therefore accept that the alleged disrepair could now constitute an arguable defence to the claim.

31. Accordingly, the Tribunal concluded that the Respondent did not have an arguable defence to the application. The Tribunal accepted that the Respondent had accrued arrears of £1824.67 and that the Applicant had subsequently accrued further costs of £748.60 in the pursuant of that sum. The Respondent was liable under the aforementioned terms of the tenancy agreement to pay those sums to the Applicant.
32. Accordingly the Tribunal determined to make an order for payment in the sum of £2573.27.

### **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.**

# Ruth O'Hare

**3 December 2024**

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**Legal Member/Chair**

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**Date**