

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the Housing (Scotland) Act 2014 (“the 2014 Act”) and Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTT/HPC/CV/24/1274

Re: Property at Flat 3, 13 Kane Neuk, Edinburgh, EH16 4ZL (“the Property”)

Parties:

PFPC MMR 1 LP, a Scottish Limited Partnership incorporated in Scotland with registered number 1400361/230/12042, 1 Hay Avenue, Edinburgh, EH16 4RW (“the Applicant”)

Patten & Prentice LLP, solicitors (“the Applicant’s Representative”)

Ms Kerriane Skinner, previously residing at Flat 3, 13 Kane Neuk, Edinburgh, EH16 4ZL, current whereabouts unknown (“the Respondent”)

Tribunal Member:

Ms Susanne Tanner KC (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondents should pay to the Applicant the sum of ELEVEN THOUSAND EIGHT HUNDRED AND ELEVEN POUNDS AND 13 PENCE (£11,811.13) STERLING; and made an Order for Payment in respect of the said sum

Reasons

Procedural Background

1. The Applicant’s Representative originally made two joined applications to the tribunal seeking an eviction order under Rule 109 of the 2017 Rules and a payment order under Rule 111 of the 2017 Rules.



2. The Applications were accepted for determination by a tribunal. Both parties were notified by letters dated 4 July 2024 of the date, time and place of Case Management Discussion (“CMD”) in relation to the Applications on 12 August 2024 at 1400h. The Respondent was invited to make written representations in response to the Applications by 25 July 2024. Both parties were advised that they were required to attend the CMD. The parties were advised that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision on the application which may involve making or refusing a payment order and an eviction order. The parties were also advised that if they do not attend the CMD this will not stop a decision or order being made if the tribunal considers that it has sufficient information before it to do so and the procedure has been fair. The Application paperwork and notification for both Applications was served on the Respondent by Sheriff Officers.
3. In July 2024, the Applicant’s Representative lodged an updated rent statement and made an application to increase the sum claimed to £11,113.62. A copy was sent to the Respondent.
4. On 9 August 2024, the Applicant’s Representative sent a further updated rent statement. A copy was sent to the Respondent. The Applicant’s Representative stated: *“I refer to the Case Management Discussion on Monday afternoon and attach an updated rent statement. I’ve already applied to increase the sums sued for and this statement is supplied to demonstrate the continuing grounds of recovery in my eviction application. The current balance due is £11,113.62.”*
5. The Respondent did not submit any defence or written representations to either Application before the first CMD.
6. At 0959h on the day of the CMD, the Respondent sent an email to the tribunal’s administration stating: *“I am sorry to email on such short notice. I have a meeting today but I am requesting it to be postponed. I am aware the meeting can go ahead without me but I would really like to be there for it. My mother passed away in hospital on Saturday and today is the first day that I can go to register her death and call funeral directors. I am really sorry for the inconvenience this will cause especially at short notice. I hope this can be rearranged.”* Shortly before the CMD, copies of the Respondent’s email were sent by the tribunal clerk to the tribunal members and to the Applicant’s Representative.



First Case Management Discussion (CMD) (teleconference): 12 August 2024, 1400h

7. Reference is made to the Notes on the CMD dated 12 August 2024 which were sent to both parties after the CMD.
8. The Respondent did not attend the first CMD and requested an adjournment in writing for the reason stated above.
9. The CMD proceeded in the absence of the Respondent. The sum claimed in the civil Application was amended to seek a payment order of £11,113.62.
10. The postponement application was opposed by the Applicant's Representative. Having heard from the Applicant's Representative and considered the written submission made by the Respondent, the tribunal decided to adjourn the CMD.
11. Having regard to the overriding objective to deal with proceedings justly including without unnecessary delay, the Legal Member directed that a date for the CMD should be fixed as soon as possible after 9 September 2024 and the date, time and joining instructions for the CMD will be provided to parties by the tribunal's administration.
12. A Direction was issued requiring the Respondent to do the following by 9 September 2024:
 - 12.1. The Respondent to provide a copy of her mother's death certificate, once available;
 - 12.2. The Respondent to state in writing to the tribunal, having taken any legal or housing advice she requires:
 - 12.2.1. whether she agrees that the sum of £11,113.62 is lawfully due to the Applicants for rent arrears, as per the Rent figures in schedule dated 8 August 2024;
 - 12.3. Any benefit claims she may have made and a current benefits statement showing any benefits she has received or currently receives for housing;
 - 12.4. Whether she opposes the Application for eviction and if so, why;
 - 12.5. Anything else she would like to say in defence to either application



13. A Direction was issued to the Applicant or its Representative to provide by the same date and time: copies of any emails with the Respondent in relation to the rent arrears, eviction application and any benefit claims.
14. The Respondent did not comply with the Direction that was issued to her and no defence was lodged.
15. On 20 August 2024, the Applicant's Representative responded to the Direction and produced copies of correspondence between the parties, in which the Respondent stated that she was going to receive universal credit. The Applicant's Representative stated that there had been no payments made by DWP in respect of rent.
16. Another CMD was fixed for 8 January 2025 and both parties were notified and provided with the date, time and joining instructions.
17. On 26 September 2024, £11,811.13, the Applicant's Representative sought authority to increase the sum sued for. An updated rent statement was provided showing rent arrears to 24 September 2024.
18. On 7 January 2025, the Applicant's Representative sent written submissions and evidence in relation to the Application. The Applicant's Representative stated that Ms Skinner surrendered her tenancy on 24th September 2024, and he attached a current rent statement showing a balance due of £11,811.13. He also stated that the Applicants received a deposit from the Respondent of £950, but to date she has failed to incorporate with the deposit holders to release it. A rent statement was attached.
19. The Respondent did not make any contact with the tribunal prior to the second CMD.

CMD No 2 – 8 January 2025 at 1000h (teleconference)

20. The Respondent did not attend the CMD. The tribunal was satisfied on the basis of the notification of service that the requirements of Rule 24(1) of the 2017 Rules regarding the giving of notice of a hearing had been duly complied with and proceeded with the Application upon the representations of the party present and the material before it, in terms of Rule 29 of the 2017 Rules.



21. Mr O'Donnell attended from the Applicant's Representative.
22. Mr O'Donnell requested to amend the sum claimed to £11,811.13, referring to the request which was made to the tribunal on 26 September 2024 by his colleague Mr Caldwell and copied to the Respondent.
23. Mr O'Donnell said that on 26 September the agents received an email from the letting agent Touchstone to say that the Respondent had left the property and returned the keys on 24 September 2024. The rent arrears are apportioned to 24 September 2024, as shown on the rent statement.
24. I allowed the sum claimed to be amended to £11,811.13.
25. Mr O'Donnell said that there is no further update on the deposit position. Mr O'Donnell asked client for the updated position prior to the second CMD. They said that they had applied for but had not received the deposit, because Ms Skinner had not agreed to it. Mr O'Donnell said that he does not know when the client applied for the deposit or what process the deposit protection company has if a Respondent does not cooperate.
26. There was a short adjournment to allow Mr O'Donnell to check the position about the deposit with his client.
27. After the adjournment, Mr O'Donnell said that the agents made the application to SDS for the deposit to be returned. They have an acknowledgement from SDS on 22 November 2024 of their application. They would ordinarily ensure that the tenancy had come to an end and inspect before they proceed to apply for the deposit to be returned. They requested the full deposit for rent arrears. They understand the process with the SDS is that they will write to the Respondent telling them of the Applicant's request and asking for a response. They send three chaser emails roughly 15 days apart if there has been no response. The agents are awaiting hearing further from the SDS. So far as they are aware is that SDS make a decision and then write to both parties to say what their decision has been. They expect to hear in the relatively near future. They said that if the deposit is returned in full it would be attributed to the arrears on account. They would simply take that deposit against what is outstanding on the rental arrears.
28. Mr O'Donnell asked for an order for the amended sum of £11,811.13.



29. Mr O'Donnell requested an order for interest at the rate of 4% per annum from the date of the order for payment until paid, in term of Rule 41A of the 2017 Rules.
30. The Application Form F also asked for expenses in terms of the tribunal's rules but Mr O'Donnell did not submit that there had been any unreasonable behaviour on the part of the Respondent which had put the Applicant to unnecessary or unreasonable expense.

Findings-in-Fact

31. The Applicant is the registered proprietor of the Property.
32. There was a Private Residential Tenancy agreement between the parties in respect of the Property which started on 29 June 2023 and ended on 24 September 2024.
33. Rent was payable by the Respondent at the rate of £905.89 in respect of the period 29 June 2023 to 31 July 2023 and then at the rate of £850 per calendar month thereafter in advance.
34. The Respondent made the first rent payment of £905.89.
35. The Respondent made no further rent payments during the tenancy.
36. No payments of benefits were made to the Applicant in respect of the Respondent's rent.
37. The rent arrears as at 24 September 2024 amounted to £11,811.13.
38. The Respondent has not made payment of rent arrears following the end of tenancy and the rent arrears as at 8 January 2025 remain at £11,811.13.
39. The Respondent paid a deposit of £950.00 at the start of the tenancy which was lodged in a tenancy deposit scheme.
40. The Applicant's letting agent has applied for payment of the full deposit in respect of rent arrears but the Respondent has not cooperated with the deposit release process, which is ongoing and no money has been paid to the Applicant from the deposit scheme.



41. The Respondent has not opposed the Application.

Discussion

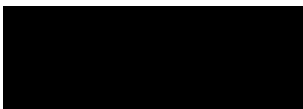
42. As the tribunal was satisfied that the Respondent owes £11,811.13 to the Applicant by way of rent arrears for the tenancy of the Property in the period to the end of tenancy on 24 September 2024, the tribunal made an Order for Payment of that sum.

43. The tribunal awarded interest under Rule 41A of the 2017 Rules at the rate of 4% per annum from the date of the order on 8 January 2025 until payment.

44. The tribunal did not make any award for expenses against the Respondent under Rule 40 of the 2017 Rules because the Applicant's Representative did not submit that there had been any unreasonable behaviour in the conduct of the case on the part of the Respondent which had put the other party to unnecessary or unreasonable expense.

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.



**Ms Susanne Tanner K.C.
Legal Member/Chair**

8 January 2025