

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 'The Procedure Rules) in relation to an application for civil proceedings relative to a Private Residential Tenancy under Rule 111 of the Procedure Rules.

Chamber Ref: FTS/HPC/CV/24/0419

Re: Flat 1/2, 36 Dudley Drive, Hyndland, Glasgow, G12 9SA ("the Property")

Parties:

Bronagh Carey residing at 35 Orleans Avenue, Jordanhill, G14 9NF ("the Applicant")

D J Alexander, John Cotton Business Centre, 10 Sunnyside, Edinburgh, EH7 5RA ('The Applicant's Representative')

Scott Wittmann residing at Flat 1/2, 36 Dudley Drive, Hyndland, Glasgow, G12 9SA ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Members: Jacqui Taylor (Legal Member)

Background

1. The Applicant submitted an application to the Tribunal for payment of the sum of £3553 rent arrears.

2. Documents lodged with the Tribunal.

Documents lodged with the Tribunal by the Applicant were:

2.1 A copy of the Private Residential Tenancy Agreement of the Property between the parties dated 17th March 2022.

2.2 A rent statement by Tay Letting dated 25th January 2024 for the period 7th May 2022 to 7th January 2024 showing rent arrears of £3553.00

3. Additional Documents provided by the Applicant's Representative:

3.1 An updated rent statement dated 1st August 2024 for the period 7th May 2022 to 7th April 2024 showing rent arrears of £6179.50.

3.2 Two Cleaning estimates (£880 and £921.05)

3.3 An invoice for the cost of changing the locks in the Property dated 11th June 2024 in the sum of £216.

4. The First Case Management Discussion

4.1 This case called for a conference call Case management Discussion (CMD) at 10.00 on 12th August 2024.

Mr Raphael Bar of DJ Alexander attended the CMD and represented the Applicant.

The Respondent did not attend the CMD.

The Respondent had been served with a letter advising him of the CMD by Stewart McLaren, Sheriff Officer, on 5th July 2024. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

4.2 Oral Representations by Mr Bar, the Applicant's Representative.

4.2.1 He acknowledged that he had not sent the Tribunal an application to amend the sum sought.

4.2.2 D J Alexander took over the management of the lease from Tay Lettings in April 2024.

4.2.3 He spoke to the Respondent in March 2024 and the Respondent referred to the Notice to Leave that required him to vacate the Property on 19th January 2024. The Respondent said he was working towards vacating the Property in March 2024 as he had valuable possessions in the Property. The Respondent said he had copies of correspondence from Tay Lettings regarding the end of the tenancy and he would send them to Mr Bar but Mr Bar advised that he never received any such documents from the Respondent.

4.2.4 When D J Alexander took over the management of the lease from Tay Letting he was advised that the lease was on going.

4.2.4 Mr Bar arranged an end of tenancy inspection to take place on 17th May 2024.

4.2.5 He has submitted a claim to the safe deposit scheme for the full deposit to be returned to the Landlord. The claim is ongoing.

4.2.6 The Landlord cleared the Property herself. The quotations exhibited to the Tribunal had not been actioned. A number of the Respondent's belongings are held by DJ Alexander. They have advised the Respondent by email that they hold these items.

4.2.7 The Respondent stopped paying rent in October 2023 due to a disagreement with Tay Letting regarding an invoice for changing the locks in March 2023.

4.3 Outcome of the First Case Management Discussion.

The Case Management Discussion was adjourned to a Continued Case Management Discussion.

5. Direction.

The Tribunal issued a Direction requiring the Respondent to provide the Tribunal with the following:

5.1 Documentation evidencing the increase in rent to £875.50.

5.2 Documentation confirming the position regarding the return of the deposit.

5.3 Copies of the emails between the Applicant's Representatives and the Tenant concerning the end of the tenancy, the end of tenancy inspection, the cleaning of the Property at the end of the tenancy, the removal of the Respondent's possessions from the Property and the changing of the locks.

5.4 The end of tenancy inspection report.

5.5 A letter from the Council Tax department confirming who was liable for the council tax for the Property during the Period December 2023 to 17th May 2024.

6. Productions lodged by the Applicant.

6.1 Copies of emails between the Applicant's Representative and the Respondent regarding the return of the deposit.

6.2 Copies of emails between the Applicant's Representative and the Respondent regarding the termination of the tenancy.

6.3 The end of tenancy inspection report dated 22nd May 2024.

6.4 A copy of the rent increase notice.

6.5 A copy of the letter from Glasgow City Council council tax department advising that the Respondent was registered for council tax purposes in relation to the Property during the period 22 March 2022 to 17th May 2024.

7. The Second Case Management Discussion

7.1 This case called for a conference call Case management Discussion (CMD) at 14.00 on 22nd November 2024.

Mr Raphael Bar of DJ Alexander attended the CMD and represented the Applicant.

The Respondent did not attend the CMD.

The Respondent had been served with a letter advising him of the CMD by advertisement on the Tribunal website. The Tribunal administration also sent the Respondent details of the CMD by email on 1st November 2024. The Applicant's Representative had provided the Tribunal with a tracing report prepared by Nelson James which stated that they had been unable to trace the Respondent. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

7.2 Oral Representations by Mr Bar, the Applicant's Representative.

7.2.1 He acknowledged that he had not applied to the Tribunal to amend the sum sought. He advised that this had been an oversight.

7.2.2 He acknowledged that he had not provided the Tribunal with evidence of the date of service of the Notice of the rent increase but he will try to obtain a copy from the previous agents.

7.2.3 He advised that the Respondent had never collected his belongings from their office.

7.2.4 Mr Bar advised that they have still not been able to trace the Respondent and will be instructing sheriff officers to carry out a further tracing report. He acknowledged that he could ask the Tribunal to grant an order for payment in the sum of £3553 as detailed in the original application and then submit a new application

for the additional sums due but given the whole circumstances he wished to apply for a further continuation.

7.3 Outcome of the Second Case Management Discussion.

The Second Case Management Discussion was continued to allow the Applicant's Representative an opportunity to amend the application to increase the sum sought.

8. Application to amend the Application.

The Applicant's Representative sent the Tribunal an email dated 9th December 2024 to amend the sum sought to £6742.12.

The details are as follows:

Rent due to 17 th May 2024	£5646.12
Cleaning and removal charge	£880.00
Replacement lock charge	<u>£216.00</u>
	£6742.12

9. The Third Case Management Discussion.

This case called for a Case Management Discussion (CMD) at 11.30 on 27th January 2025.

The Applicant's Representative Mr Bar of D J Alexander attended. The Respondent did not attend and were not represented.

The Respondent had not provided any written representations.

The Respondent had been served with a letter advising him of the CMD by advertisement on the Tribunal website. The Tribunal administration also sent the Respondent details of the CMD by email on 9th December 2024. The Tribunal were satisfied that the requirements of Tribunal Rule 29 had been complied with and continued with the CMD.

Mr Bar advised the Tribunal as follows:

9.1 He asked the Tribunal to accept his application to increase the sum sought to £6742.12.

9.2 He acknowledged that he had not provided the Tribunal with evidence that the notice of the rent increase had been served on the Respondent. He confirmed that the Respondent had not paid the increased rent of £875.50. He also confirmed that the rent statement produced included nine rent payments at the increased amount of £875.50.

9.3 In connection with the charge for cleaning the Property he did not have any information as to the length of time it took the Applicant to clean the Property. He tried to contact her by phone but she was not available. He accepted that the cost of someone cleaning the Property themselves would be less than the cost charged by a cleaning company. In the absence of the details of the time taken he accepted that 50% of the cleaning company's quotation (£440) would be a reasonable figure given

the terms of the check out report and the amount of personal items that had been left in the Property.

10. Decision

10.1 The Tribunal made the following findings in fact:

10.1.1. The Respondent had been Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy detailed in the lease was 17th March 2022. The tenancy ended on 17th May 2024.

10.1.2 The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

10.1.3 The Applicant is Landlord of the Property.

10.1.4 The Applicant is heritable proprietor of the Property in terms of Land Certificate GLA88363.

10.1.5 The rent detailed in the tenancy agreement was £850 per calendar month, payable in advance.

10.1.6 No evidence had been provided to the Tribunal that the Notice of Rent increase had been served on the Respondent.

10.1.7 The Deposit of £850 had been paid to the Applicant.

10.1.8 The rent arrears as at 17th May 2024 (disregarding the increase in rent) were £5416.62.

10.1.8 The condition of the Property at the end of the lease is confirmed in the checkout report by Scott Luttrell of D J Alexander dated 22nd May 2024.

10.1.9 The Applicant had cleaned and cleared the Property herself at the end of the Tenancy.

10.1.10 The Respondent had not returned the keys to the Applicant's Representatives at the end of the tenancy.

10.1.11 The Applicant had incurred the sum of £216 to replace the locks at the Property.

11. Decision

11.1 The Tribunal accepted the evidence of the Applicant's Representative that the tenancy ended on 17th May 2024. This is confirmed by the council tax notice that has been produced.

11.2 No evidence had been provided to the Tribunal that the Notice of Rent Increase had been timeously delivered to the Respondent. Accordingly, the Tribunal were unable to accept the rent had been effectively increased. The Tribunal determine that

the rent arrears due by the Respondent for the period 7th October 2023 to 17th May 2024, on the basis of the monthly rental figure of £850, was £5416.62.

11.3 Clause 17 of the private residential tenancy agreement between the parties requires the Tenant to ensure that the Property and the fixtures and fittings are kept clean during the tenancy. Clause 42 of the agreement states that the Tenant will leave the Property in a good and clean condition at the end of the tenancy and the Tenant shall pay for any cleaning required to reinstate the Property to the same condition it was in at the start of the tenancy. The check out report by Scott Luttrell of D J Alexander dated 22nd May 2024 shows that the Property was not in a good and clean condition at the end of the Tenancy and there were many items remaining in the Property that would have to be removed. The Tribunal accept that the estimate from Transformers Cleaning Company showing the estimated cost of deep cleaning and clearing the Property in the sum of £880 is a reasonable charge by a cleaning company. The Tribunal find that the cost to the Applicant of cleaning and clearing the Property would be less than the sum of £880 and it is likely that this would be the reason the Applicant would have carried out the work herself. In the absence of the details of the work carried out by the Applicant to clean and clear the Property the Tribunal find that on the balance of probabilities it is reasonable to estimate that the Applicant would have incurred time and expenses amounting to 50% of the sum of £880 which amounts to **£440**.

11.4 Clause 39 of the lease states that if the Tenant loses keys for the Property or where keys are not returned at the end of the tenancy the tenant is liable for costs incurred. The Respondent did not return the keys to the Applicant's Representative at the end of the tenancy. The Tribunal accepts that the cost of replacing the locks and keys of the Property amounted to **£216**, in terms of the invoice from Lock & Co(Glasgow) Limited produced.

11.5 The Tribunal determine that the sums due by the Respondent to the Applicant in respect of this application amount to **£6072.62** and accordingly they issued an Order for Payment in this sum.

12. 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.

Jacqueline Taylor

..... Legal Member

27th January 2025