



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

Chamber Ref: FTS/HPC/CV/24/1940

Re: Property at 3/2 9 Clynder Street, Glasgow, G51 2EW (“the Property”)

Parties:

Ms Yufan Chen, Mr Marco Barot, 0/1, 143 Yorkhill Street, Glasgow, G3 8NS (“the Applicants”)

Marble Properties Ltd, BLUE SQUARE BUSINESS CENTRE, 272, BATH STREET, GLASGOW, G2 4JR (“the Respondent”)

Tribunal Members:

Nicola Irvine (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for Payment against the Respondent in favour of the Applicants in the sum of £775.67.

Background

1. The Applicants submitted an application under Rule 111 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”). The Applicant sought an order for payment in the sum of £1,674.51 in respect of rent paid in advance by the Applicants.
2. A Convenor of the Housing and Property Chamber (“HPC”) having delegated power for the purpose, referred the application under Rule 9 of the Rules to a case management discussion (“CMD”).
3. Letters were issued on 22 July 2024 informing both parties that a CMD had been assigned for 22 August 2024 at 10am, which was to take place by conference call. In that letter, the parties were also told that they were required to take part in the discussion and were informed that the Tribunal could make

a decision today on the application if the Tribunal has sufficient information and considers the procedure to have been fair.

4. On 22 August 2024, the Tribunal granted the Applicants' request to postpone the CMD. A new CMD was assigned for 13 February 2025 at 10am.

The case management discussion – 17 December 2024

5. The CMD took place by conference call. The Applicants joined the call, and their position was set out by the Second Applicant. The Respondent was represented by Mr. Alan Wall. The Tribunal explained the purpose of the CMD. Thereafter, the Tribunal observed that the Applicants' position as set out in the application was that they had paid 6 months' rent in advance and having terminated the lease early, sought a refund of rent. The Tribunal enquired whether the application was opposed. The Respondent's representative explained that it was opposed. He advised that the Respondent's position was that the notice served by email on 21 March 2024 was invalid. The Respondent received a further email from the First Applicant on 17 April 2024 and following receipt of that, the tenancy was terminated on 15 May 2024. The Respondent repaid the Applicants £895 in respect of future rent they had paid. The Respondent also refunded the Applicants' deposit in full through the tenancy deposit scheme.
6. The Tribunal raised with the Respondent's representative the terms of the Applicants' email on 21 March 2024 and the response sent by the Respondent on the same day, which advised that the notice had been accepted. The Respondent's position was that the notice was initially treated as a valid notice, but the Respondent reconsidered this position and advised the Applicants on 17 April 2024 that the notice was not valid. The Respondent relied on the term of the tenancy agreement which states that one tenant cannot terminate the joint tenancy on behalf of all tenants.
7. The Applicants accepted that they had received payment of £895 from the Respondent on 7 May 2024 and that they had received return of the tenancy deposit. In light of this, the Applicants reduced the sum claimed to £775.67, being 27 days' rent.

Findings in Fact

8. The parties entered into a private residential tenancy which commenced 15 December 2023.
9. The contractual monthly rent was £895.
10. The Applicants paid 6 months' rent in advance, in the sum of £5,370.
11. On 21 March 2024 the Applicants gave the Respondent 28 days' notice to terminate the tenancy agreement.

12. The termination date of the tenancy was 18 April 2024.

Reason for Decision

13. The Tribunal proceeded on the basis of the documents lodged, and the submissions made at the CMD.

14. The tenancy agreement sets out at clause 7 that monthly rent was £895. It also sets out that the sum of £5,370 was paid. The clause states that it covered the period 15 December 2023 to 14 May 2024. That period is only 5 months. However, the parties were agreed that the Applicants paid 6 months of rent in advance and the sum actually paid by the Applicants equates to 6 months' rent.

15. The Applicants sent an email to the Respondent on 21 March 2024 providing 28 days' notice to terminate the tenancy. The email was sent from the Second Respondent's email address and was signed off "*Marco and Yufan*". The response from the Respondent on the same day stated "*Your notice is accepted. We will start marketing the property soon.*" Thereafter text messages were exchanged between the parties. The Respondent advised the Applicants that there were prospective tenants interested in the property and viewings were arranged. On 23 March 2024, the Respondent sent a message to the Applicants which reads "*So you can hand keys back to us on 18.04.24 for sure as the incoming tenant is coming from England and it must be ready if agreed?*" The Applicants responded "*Agreed*". The Respondent responded on 24 March 2024 "*Morning marco this is not set on stone. We are just trying to negotiate at the moment.*" What is clear from the text exchange is that both parties proceeded on the basis that the Applicants' notice had been accepted. The actions taken by the Respondent in marketing the property for rent is supportive of that. The Applicants cooperated with the Respondent in accommodating viewings of the property. The text exchange mentions 18 April 2024 as being the termination date of the tenancy. On 17 April 2024, the Respondent sent an email to the Applicants advising that the notice served on 21 March 2024 was not valid. The First Applicant responded on that date confirming that both Applicants agreed to terminate the tenancy with 28 days' notice on 21 March 2024.

16. Clause 23 of the tenancy agreement makes provision for how the tenancy can be terminated and states it can be done by:

"The Tenant giving the Landlord at least 28 days' notice in writing to terminate the tenancy, or an earlier date if the Landlord is content to waive the minimum 28 day notice period. Where the Landlord agrees to waive the notice period, his or her agreement must be in writing. The tenancy will come to an end on the date specified in the notice or, where appropriate, the earlier date agreed between the Tenant and Landlord. To end a joint tenancy, all the Joint Tenants must agree to end the

tenancy. One Joint Tenant cannot terminate the joint tenancy on behalf of all Joint Tenants.”

This clause does not say that there must be separate emails from joint tenants. It says that all tenants must agree to end the tenancy. The email from the Second Applicant on 21 March 2024 was signed off by both Applicants. The subsequent text exchange was with both Applicants and the Respondent. It therefore ought to have been clear to the Respondent that both Applicants were agreed in relation to termination of the tenancy.

17. In light of the email and text exchange between the parties, it was clear that both parties were proceeding on the basis that the notice served was valid. On the basis that the notice was valid, the termination date was 18 April 2024. It was only the day before the termination date that the Respondent changed its position about that.
18. The Tribunal invited parties to make submissions about personal bar. The Respondent's position was as previously stated, that is, that the notice given on 21 March 2024 was not valid.
19. In light of the steps taken by the Respondent on and after 21 March 2024, the Tribunal decided that the Respondent was personally barred from challenging the validity of the notice given on 21 March 2024. The Applicants relied on response from the Respondent on 21 March 2024 advising that the notice had been accepted. The Tribunal was not persuaded that it was necessary for both Applicants to send separate emails terminating the tenancy but if there was any defect in the notice sent on 21 March 2024, any such defect was cured by the response given by the Respondent and its subsequent actings. The Respondent actively marketed the property for rent and arranged viewings.
20. The Respondent has already refunded the sum of £895. This was on the basis that the Respondent treated the tenancy as having terminated on 15 May 2024. The Tribunal did not accept that the tenancy terminated on that date. In light of all of the information provided, the Tribunal found that the tenancy was properly terminated on 18 April 2024. The Applicants are therefore entitled to be refunded rent from 19 April 2024 to 15 May 2024. The Applicants calculated that they were due a refund of £775.67. This appears to have been calculated by dividing the monthly rent of £895 by 30 days and multiplying by 27 days. The Respondent did not challenge the calculation by the Applicants. The Tribunal was persuaded for the reasons set out above that the Applicants are entitled to payment from the Respondent in the sum of £775.67. An order for payment has been granted against the Respondent in favour of the Applicants.

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.

Nicola Irvine

Nicola Irvine

13 February 2025

Legal Member/Chair

Date