



**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/24/1984

Re: Property at 30 Eden Grove, East Kilbride, G75 8XU (“the Property”)

Parties:

**The Church of Scotland General Trustees, 121 George Street, Edinburgh, EH2
4YN (“the Applicant”)**

**Mr Gordon Guthrie, Mrs Denise Guthrie, 114 Burns Park, East Kilbride, G74
3EG; 53 Wilson Street, Larkhall, ML9 2QB (“the Respondent”)**

Tribunal Members:

Mary-Claire Kelly (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Second Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined to grant an order for payment in the sum of ONE
THOUSAND TWO HUNDRED AND EIGHTY-ONE POUNDS AND SIXTY PENCE
(£1281.60)**

Background

1. By application dated 1 May 2024 the applicant seeks an order for payment in the sum of £4108.80 in respect of rent arrears.
2. The applicant submitted the following documents:
 - Copy tenancy agreement.
 - Statement of rent arrears.
 - Email correspondence between the letting agents and first respondent.
 - Copy notice to leave

3. Mr Guthrie submitted written representations, copy email correspondence with the letting agents and pages from 2 tenancy agreements.
4. A case management discussion (“cmd”) took place on 19 September 2024. The applicant was represented by Mr DiPaola, solicitor from Church of Scotland Law Department. Mr Guthrie appeared on his own behalf. Ms Guthrie was not in attendance.
5. Parties were in agreement that a lease had been entered into with a commencement date of 28 May 2021. The rent payable in respect of the lease was £1200 per calendar month. The property had been occupied by the respondents and their children. Prior to the tenancy terminating the respondents’ relationship had broken down and they have moved to separate tenancies since leaving the property.
6. Parties were in dispute regarding the date the tenancy terminated. In light of the factual dispute regarding the termination date of the tenancy which would have a direct impact on the arrears due an evidential hearing was fixed.

Hearing – 13 June 2025- teleconference

7. The applicant was represented by Mr DiPaola. Mr Guthrie appeared on his own behalf. Ms Guthrie was not in attendance. The Tribunal was satisfied that Ms Guthrie had been properly notified of the hearing in terms of rule 24.1 and continued with the hearing in her absence in terms of rule 29.
8. Mr DiPaola sought an order for payment in the sum of £4108.80. Mr Guthrie disputed that he was liable for that amount. He accepted that rent was due until the end of July 2023 however he stated that there had been an agreement with the letting agents, Angel Homes that the respondents would be charged 50% for the last month and that the £1200 deposit the respondents had paid would be refunded and used to cover part of the rent due. By his calculation the respondents were liable for £600.
9. Mr DiPaola led evidence from one witness, Lynn Holmes, treasurer of the Mossneuk Parish Church in East Kilbride. Mr Guthrie gave evidence on his own behalf. He confirmed that he had separated from the Ms Guthrie who would not be attending the hearing.

10. A summary of the evidence heard is undernoted. For the avoidance of doubt this is not a verbatim record of what was said but a summary of the relevant evidence in relation to disputed facts.

Evidence of Lynn Holmes

11. Ms Holmes confirmed that she is the treasurer of Mossneuk Parish Church in East Kilbride. This is a voluntary role which she has done for the past 35 years. The property is a manse and had previously been the residence of the Church of Scotland minister. The Church had employed Angel Homes to manage the rental of the property. They had generally provided a monthly statement to Ms Holmes showing the rental income received. Ms Holmes stated that she was provided with monthly statements up until the last 6 months of the tenancy. Ms Holmes thought that the tenancy ended on 29 September 2023. She stated that she had asked the letting agents on a number of occasions before that if the property had been vacated and had been advised that they could not get a hold of Mr Guthrie to get the keys back. She stated that a notice to leave relying on the abandonment ground had been served on the respondents due to their failure to return the keys in September 2023.
12. Mr Holmes stated that she was clear that the respondents had not left the property in July 2023. She stated that she did not pass the property so would not have been personally aware of whether the respondents had moved out and relied on the letting agents for updates.
13. Ms Holmes stated that a deposit of £1200 had been paid by the respondents. She stated that this had been applied to the rent due prior to the months shown in the rent statement that had been produced in June 2023. However, she was unclear which month's rent the deposit had been applied towards. She stated that she received a notice stating that the Church was liable to pay council tax from September 2023. She contacted the letting agents in September and was told at that stage that Mr Guthrie had moved out. That was when she was told that rent hadn't been paid for June, July and August. She stated that she was not made aware of any discussions between the letting agents and Mr Guthrie about rent being reduced for the last 3 months of the tenancy.

14. Ms Holmes stated that the quality of communication from the letting agents had decreased for the last 6 months of the tenancy. She was unsure what the reason was for that – she thought there may have been a change of management. She stated that the previous year the Church had thought that it would require the property back as it was expected that a new minister would be appointed who would require use of the property however there had been no appointment.
15. Ms Holmes was referred to the terms of the tenancy agreement. She accepted that the rent was payable one month in advance on the 28th of the month. Accordingly the rent statement which had submitted which showed a payment due for 28 September 2023 was incorrect as that would relate to a payment in advance for October.

Evidence of Gordon Guthrie

16. Mr Guthrie accepted liability for rent until the end of July 2023, however he stated that a 50% deduction had been agreed with the letting agents for the last month. He stated that it had also been agreed that the deposit of £1200 would be applied to the rent due after notice had been given to the letting agents that the respondents were moving out. He stated that this meant that for the 2 months' rent which had not been paid on 28 May and 28 June, £600 remained due.
17. Mr Guthrie confirmed that he had resided in the property with Ms Guthrie and their children. He stated that they have moved into the property in the hope that it would be a long term home. He stated that they received notice to leave the property in August 2022 when they were told that the Church required the property back. This had been unexpected and caused upset to the family. No proceedings had been raised as the appointment had not taken place.
18. Mr Guthrie stated that the main point of contact at the letting agents had been Janette. She had left around March 2023. Mr Guthrie stated that communication from Angel Home had been terrible. He stated that there had been 2 sets of keys for the property. The first set of keys had been handed to the letting agents in the presence of Mr Guthrie's friend at the end of July. A second set had been returned to the letting agents at a later date.

19. Mr Guthrie referred to the 2 partial lease documents that had been submitted. He and Mrs Guthrie had separated and the lease entered into by her had a commencement date of 14 July 2023. The lease signed by Mr Guthrie had a commencement date of 1 June 2023. Mr Guthrie confirmed that he had moved into the property specified in the lease and continued to reside there.
20. Mr Guthrie stated that he had agreed with the letting agents that after the tenancy terminated at the end of July 2023 he would be allowed some time to move out some larger items of furniture. He did not accept that he was liable for rent for the period when the furniture and white goods were in the property. He stated that the emails requesting return of the keys after July 2023 referred to a second set of keys and were not relevant to when the tenancy ended.
21. Mr Guthrie was referred to an email dated 11 August 2023 within which he stated, *"I am in the process of moving out of the property"* and *"for clarity, we will return the keys no later than Monday 21st August"*. He accepted that he sent the email but disputed that was what had happened.
22. Mr Guthrie was referred to an email sent by him on 24 August 2023 within which he stated: *"we aim to be out this weekend"*. Mr Guthrie disputed that the email referred to showed that the tenancy agreement was continuing and was solely related to the removal of larger items of furniture and white goods from the property.
23. Mr Guthrie was referred to an email dated 21 September 2023 to the letting agents stating, *"you should have had the keys last week"*. He accepted that he had sent the email but maintained that the email referred to the return of the second set of keys and did not have any bearing on the termination date of the tenancy.

Findings in fact and law

24. Parties entered in a private residential tenancy agreement with a commencement date of 28 May 2021. The respondents were in a relationship and moved into the property with their children.
25. Monthly rent due in terms of the tenancy agreement was £1200 payable monthly in advance on the 28th day of the month.

26. The respondents paid a deposit of £1200 at the commencement of the tenancy agreement.
27. Angel Homes managed the property on behalf of the applicant.
28. The respondent was advised on or around August 2022 that the property would be required back as the applicant expected a Church of Scotland minister to be appointed who would require use of the accommodation. No further action was taken as the appointment of a minister did not proceed
29. On or about March 2023 the quality of communication between the letting agents and the applicant reduced. Monthly statements showing rent received were not provided to the applicant regularly from then onwards.
30. Mr Guthrie emailed Angel Homes on 28 May 2023 giving 28 days' notice that he wished to terminate the tenancy.
31. The email did not fulfil the requirement for a tenant terminating a private residential tenancy agreement in terms of the tenancy agreement and sections 48 and 49 of the Private Housing (Tenancies)(Scotland) Act 2016. The respondents remained in the property after the notice period provided expired.
32. The respondents' relationship had broken down and they moved to different addresses after they left the property .
33. Mr Guthrie entered into a tenancy agreement for a property in East Kilbride with a commencement date of 1 June 2023.
34. Mrs Guthrie entered into a Scottish Secure tenancy agreement at a different property with a commencement date of 14 July 2023.
35. A number of large items of furniture including white goods remained in the property after 31 July 2023.
36. Mr Guthrie retained a set of keys for the property until on or about 15 September 2023.
37. The tenancy terminated on or around 15 September 2023.
38. The letting agents emailed Mr Guthrie on 10 , 24, 29 and 31 August 2023 and 5 and 21 September 2023 regarding the tenancy including arrangements for returning the keys and removing items from the property.
39. The last date the respondents were due to make payment of rent was 28 August 2023 as this payment would be an advance payment for rent due in September.
40. The respondents are liable for full rent until the tenancy terminated.

41. The parties agreed that the tenancy deposit would be applied to the ongoing rent charges after the respondent's email dated 28 May 2023.
42. The rent statement produced by the applicant spans the period from 28 June to 28 September. The applicant seeks to recover the rent due after deduction of administrative charges, i.e. £1027.20 per month.
43. The statement incorrectly includes a rent charge due on 28 September 2023 and does not show a deduction for the refund of the deposit. It does not show a deduction from September's monthly rent to reflect that the keys were returned on or around 15 September 2023.
44. The respondents are liable for 3 of the months shown on the rent statement of £1027.20 up until the 28 August payment less a deduction for the deposit of £1200 and £600 for rent due until 15 September leaving a total liability of £1281.60

Reasons for the decision

45. It was unfortunate that no witness evidence was led from either side from the letting agents who managed the property. Ms Holmes was genuine and straightforward in her evidence however the management of the tenancy had been delegated to Angel Homes. Ms Holmes was not directly involved in the day to day administration. Both she and Mr Guthrie gave evidence that there had been an issue with communication from the letting agency from March 2023 which covered the period over which parties are in dispute.
46. A notice to leave had been referred to in evidence as expiring on 30 September 2023 however a copy of the notice had not been provided. The rent statement that had been submitted did not specify the monthly rent due under the tenancy agreement but rather the amount paid to the applicant after deduction of administrative fees. The rent statement was incorrect insofar as it included a payment due on 28 September 2023 which would have been for the month of October when it was accepted that the tenancy had terminated by the end of September. No documentation or evidence had been provided to demonstrate a deduction from the rent account to reflect refund of the £1200 deposit.

47. Mr Guthrie produced no evidence of an agreement with the letting agent that the rent would be reduced by 50% for the last month. Had this been agreed it would have been expected there would be documentary evidence. In the absence of objective evidence on this point the Tribunal does not accept that there was such an agreement.
48. Mr Guthrie's position that the tenancy terminated on 31 July 2023 and that he returned the keys on that date was also not supported by any objective evidence. He had stated at the cmd that a friend would confirm that he had handed back a set of keys at that time however no evidence had been produced. The Tribunal found Mr Guthrie's evidence that there had been 2 sets of keys one of which post-dated the termination of the tenancy and did not relate to his occupation of the tenancy to be unclear. The Tribunal found his evidence that holding a second set of keys and having continued occupancy of the property for the purpose of storing personal possession had no bearing on rental liability to be unconvincing.
49. The Tribunal accepted Mr Guthrie's evidence that both respondents had secured new accommodation by the end of July 2023. However, that does not mean that the tenancy had terminated on that date. In the absence of valid notices being produced by either party the Tribunal determined the termination date to be the date when the respondents vacated the property and returned the keys to the applicant.
50. The Tribunal gave significant weight to the emails produced by the applicant showing communications between the letting agents and Mr Guthrie. In particular in an email dated 11 August 2024 the Mr Guthrie had written: "*I am in the process of moving out of the property....we will return the keys no later than 21 August 2025*". The Tribunal accepted this as evidence that the tenancy was still in place as at that date. Further emails from September 2023 referred to 15 September as the termination date. An email dated 21 September from Mr Guthrie to the letting agents stated: "*You should have had the keys last week.*" This email showed that Mr Guthrie had retained the keys until mid-September. An email dated 26 September states that locksmiths were being instructed to change the locks as although Mr Guthrie had confirmed that he had vacated the property he had not returned the keys. Based on the email

evidence the Tribunal determined that the tenancy terminated before 30 September which was the date the applicant submitted and determined that on the balance of probabilities the keys had been returned and the tenancy terminated on or around 15 September 2023.

51. The Tribunal could not be satisfied on the basis of the evidence produced that the tenancy deposit had been deducted from the respondent's rental liability - no rent statement had been produced to show that and Ms Holmes' evidence was uncertain as to which month the deposit had been applied to. Taking into account an adjustment to remove the incorrect month from the rent statement, the return of the deposit and a termination date of 15 September 2023 the Tribunal determined that the respondents were in arrears of rent amounting to £1281.60 when the tenancy terminated.

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.

M-C.Kelly

Legal Member/Chair

13 June 2025 _____
Date