



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/24/3363

Re: Property at 2, 10 Marlborough Street, Portobello, Edinburgh, EH15 2BG (“the Property”)

Parties:

Sheila Maclean, 1 French Thyme Hill, Cobbs Cross, English Harbour, Antigua and Barbuda (“the Applicant”)

Jean Goodband, 2, 2F2 Cambusnethan Street, Edinburgh, EH7 5UA (“the Respondent”)

Tribunal Members: Alison Kelly (Legal Member) and Gordon Laurie (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment in the sum of £1768.71, with interest at the rate of 8% per annum from 3rd October 2025 until payment, should be made.

Background

1. The background is contained in the Case Management Discussion Note dated 24th February 2025.

Hearing

2. The Hearing took place by teleconference on 3rd October 2025. Each party dialled in and represented herself.
3. The Chairperson introduced everyone and explained the purpose and scope of the Hearing. She confirmed with the parties that they agreed the disputed

issues and that nothing else would be dealt with by the Tribunal. They agreed that the figure for arrears, should the Tribunal conclude that it was due, is £1468.71.

4. On the issue of the terms of the agreement between the parties which brought the tenancy agreement to an end the Applicant said that she wished to move back in to the property and gave notice. She said that she was advised that the Respondent did not need to leave and could stay until a Tribunal order for eviction was granted. She said that she was advised that the Respondent might not pay rent, or the arrears of rent during that period, and that it could take a long time to get an eviction order.
5. The Applicant said that the advice she was given made her worried as she needed the rent. She said that she is 65, single and the rent is her only income as she doesn't yet qualify for a pension. She decided to offer to pay the first month's rent and the deposit on a new rental property for the Respondent in the hope that she could gain possession of the property more quickly. She said that at no point did she say or suggest that the rent arrears which were owed by the Respondent would be waived as part of the offer. She said she could not afford to do that. Making the payment for the month's rent and deposit ate in to her savings. She said that she has decided not to continue with renting the property out in the future.
6. The Applicant said that the negotiation was all done by email sent to her letting agent, and email from the letting agent to the Respondent. At no point was the word "waive" used in relation to the arrears. This was never mentioned as part of the deal.
7. The Respondent said that she was told by the letting agent that the Applicant wished to move back in to the property due to her personal circumstances. The agent was clear that it was not because of anything the Respondent had done. The Respondent said that she emailed the letting agent to say that she couldn't move out. The Applicant then made the offer of a month's rent and the deposit on a new property.
8. The Respondent referred to the email of 5th July 2024 from the letting agent. She said two options were given in that email, which were she could accept the offer of a fixed sum of £1450 on vacating the property, or, if she didn't accept by 15th July the offer would be withdrawn and legal action would be taken for eviction and payment of arrears. The Respondent inferred from that that if she accepted the offer of £1450 and moved out, she would not be pursued for the arrears. The Respondent accepted that the issue came down to the interpretation of the wording of that email, as no other discussion had taken place.
9. The Tribunal made reference to the Adjudication Decision made by MyDeposits Scotland, dated 5th November 2024. The adjudicator had determined that £1120 (the balance of the deposit after other sums had been awarded to the Applicant) should be awarded to the Applicant in respect of

rent arrears, and in which decision the adjudicator mentioned that there was no clear evidence to the contrary from the Respondent that the arrears were not due and no clear evidence that the Applicant had agreed to the shortfall. The Respondent said that she did take part in the adjudication process. She put forward all the information about the deal that she has put forward to the Tribunal. She said that it was a purely paper adjudication exercise and she couldn't counter it.

10. The Respondent said that she was surprised that the Applicant's letting agent had not contacted her after she vacated to tell her that the arrears were still due.
11. On the disputed issue regarding the rate of interest the Applicant said that it was contained in the Tenancy Agreement and that she considered 8% to be a fair and reasonable figure. She assumed that the Respondent had read the Tenancy Agreement in full before signing it.
12. The Respondent said that she did not have any comment to make about the figure for interest but felt it was unfair to award it as she had not been contacted by the agency after she left the property to tell her that arrears were still due.
13. On the disputed issue regarding the invoices for legal fees the Applicant said that she was not a qualified lawyer and she felt that she was entitled to approach a lawyer for advice. The Tribunal confirmed with her that she agreed that she sought to evict the Respondent so that she could move back in, and not because the Respondent was in arrears of rent. She confirmed that was the case. The Tribunal then made reference to the terms of Clause 8 of the Tenancy Agreement, which deals with the ability to claim reasonable legal fees in relation to action taken in relation to rent arrears, and asked the Applicant how that related to the invoice from Gilson Gray dated 31st July 2024, which appeared to cover not only drafting the application to the Tribunal, but also advice in relation to making the offer to the Respondent to vacate. The Applicant said that she could see the point the Tribunal was making and had nothing to say about it.
14. The Respondent said that she agreed with the point the Tribunal was making.

Findings In Fact

- i. The parties entered on to a Private Residential Tenancy dated 22nd December 2023 with a rent of £1300 per month
- ii. Clause 8 of the Agreement allows the Applicant to charge interest at the rate of 8% per annum from the due date until payment;
- iii. Clause 8 of the tenancy Agreement allows the Applicant to claim reasonable costs resulting from the Respondent's failure to pay rent on time;

- iv. The Applicant wished to regain possession of the property so that she could move back in;
- v. The Applicant offered the Respondent £1450, being the deposit and first month's rent, to move to a new rental property;
- vi. The Applicant's letting agent sent an email to the Respondent dated 5th July 2024;
- vii. The Respondent accepted the offer in an email dated 12 July 2024;
- viii. The Respondent vacated the property in July 2024;
- ix. At the time the Respondent vacated the property she was in rent arrears amounting to £2558.71;
- x. The Applicant applied to MyDeposits Scotland for return of the deposit to her for various reasons;
- xi. My Deposits Scotland issued an Adjudication Decision dated 5th November 2024;
- xii. In that decision the Adjudicator held that the rent arrears in the amount of £2558.71 were due;
- xiii. The Applicant's solicitor issued two invoices to her, one dated 31st July 2024 in the amount of £673.20 and one dated 17th January 2025 in the amount of £300.

Reasons For Decision

- 15. The Tribunal found both parties to be credible and reliable.
- 16. In relation to the first disputed issue, whether or not the arrears were due, the Tribunal found in favour of the Applicant. The matter has already been dealt with by the Adjudicator at MyDeposits Scotland. It was found by the Adjudicator as follows:

A rent statement shows there to be a shortfall of rent totalling £2588.71 from 1 May 2024 to 20 July 2024 so, with no clear evidence to the contrary from the tenant, the rent statement is found to be correct and so, with no evidence to show the landlord agreed to this shortfall, a breach of the tenancy agreement has been shown. It is therefore found to be fair and reasonable for the landlord to retain this amount however, my remit is limited to the withheld deposit amount and, when the above awards are considered, this leaves £1120.00 which is awarded here and if the landlord seeks the £1468.71 difference, they should obtain independent legal advice and pursue this through some other means / source of redress.

- 17. The Tribunal considers the matter to be *res judicata*, in that it has already been dealt with by a competent body and therefore may not be pursued further by the same parties. The Adjudicator could not award the full amount as the deposit had already been exhausted, but they did make the decision that the sum was due.

18. In any event, had the Tribunal been able to make a decision it would have made the same one as the Adjudicator. There was no specific mention of waiving the arrears and the Applicant is quite clear that this was not part of the offer that she made. The Respondent confirmed that she had drawn an assumption based on the wording of the email from the letting agent dated 5th July 2024. The Tribunal does not agree that the assumption was entitled to be drawn based on the wording of that email and of her email of 12th July 2024 accepting the offer.

19. In relation to interest the Tribunal accept that the rate of interest in Clause 8 of the Tenancy Agreement is 8% per annum, and that as this is the judicial rate, and is contractual, it is fair and reasonable. However, the Tribunal is only prepared to award it from the date of the order as the Applicant did not contact the Respondent after she vacated to tell her it was still due, prior to raising Tribunal proceedings for its recovery.

20. The last paragraph of Clause 8 of the Tenancy Agreement states:

The Tenant shall be held liable for any further reasonable costs incurred by the Landlord through the Tenant's failure to pay rent on time including, but not limited to, any administrative charges or late fees made by the Landlord's bank, any expenses incurred by the Landlord in pursuing the Tenant for payment of said unpaid rent, legal or otherwise.

21. The Tribunal is satisfied that the wording of the clause allows the Applicant to pursue legal expenses, but they must be in relation to failure to pay rent on time and reasonable.

22. The Tribunal finds that the invoice from Gilson Gray dated 17th January 2025 in the amount of £300 is in relation to failure to pay rent on time and is reasonable.

23. The invoice from Gilson Gray dated 31st July 2024 in the amount of £673.20 relates to more than advice given in relation to failure to pay rent. The Applicant was clear that she was not seeking to evict the Respondent in relation to rent arrears. Advice in relation to the offer she made is therefore not chargeable to the Respondent. The invoice does not break down how much of it was in relation to the preparation of Tribunal proceedings, and the Tribunal cannot make an assumption and allocate the sum charged to separate elements. It is therefore not reasonable to allow this charge.

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.

Alison Kelly

Legal Member/Chair

03/10/2025
Date