



**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/24/3377

Property : 44 Rosslyn Crescent, Edinburgh EH6 5AX (“Property”)

Parties:

**Martin Mellor and Ewan Halley, Mid Danna, Tayvallich, Lochgilphead, Argyll
PA31 8PQ (“Applicant”)**

**Mattac Ltd, 93 George Street, Edinburgh EH2 3ES (“Applicant’s
Representative”)**

Steven Sibbald, 44 Rosslyn Crescent, Edinburgh EH6 5AX (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Gerard Darroch (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
 (“Tribunal”) determined that an order for payment of £33,100 should be made in
 respect of rent arrears for the period 28 July 2023 to 28 September 2025**

1. The Applicant sought an order for payment of £19,500 in respect of rent arrears. The Applicant had lodged Form F. The documents produced were: a Private Tenancy Agreement which commenced on 1 July 2023 and a statement of rent arrears.
2. A Case Management Discussion (“CMD”) took place on 9 January 2025. Reference is made to the note of the CMD. The outcome of the CMD was that the Tribunal allowed the sum claimed to be amended to £27,600, a Direction was issued and a continued CMD was fixed for 11 June 2025.
3. The Applicant’s Representative lodged a response to the Direction on 30 January 2025. On 6 February 2025 the Respondent sought an extension of time to lodge a response to the Direction. On 18 March 2025 the Respondent

lodged two written representations, one timed at 13.27 and one at 17.57. On 11 June 2025 at 08.24 the Respondent lodged a further written representation.

Continued CMD

4. A continued CMD took place before the Tribunal on 11 June 2025 by teleconference. Martin Mellor of the Applicant was in attendance as was the Respondent. The Applicant was represented by Paul McIntosh of the Applicant's Representative. The outcome was that the Tribunal fixed an evidential hearing to take place on 14 October 2025 and issued a Direction.
5. The Respondent lodged a response to the Direction on 25 July 2025. The Applicant's Representative lodged a response to the Direction on 22 August 2025.

Hearing on 14 October 2025

6. A Hearing took place at George House, George Street, Edinburgh on 14 October 2025. The case was conjoined with FTS/HPC/EV/24/3379. Reference is made to the Decision in that case dated 20 October 2025 and in particular to the summary of the evidence given by the Parties at the Hearing..
7. Mr McIntosh referred to the statement of arrears lodged by him on 6 October 2025 which showed arrears of £38,400. He asked the Tribunal to allow the sum claimed to be amended to that figure. Failing which he asked the Tribunal to grant an order for payment of the figure of £35,700 shown on the rent statement lodged on 22 August 2025.
8. The Tribunal noted that the Respondent accepted that no rent had been paid since September 2023 and asked Mr Sibbald if he accepted that 24 months of rent was outstanding. He said that he accepted that the rent had not been paid for that period but he submitted that £4200 should be deducted in respect of the period when the Applicant were not registered landlords for the Property and £2600 should be deducted in respect of the 4 months he paid rent at the rate of £2000 between February and June 2023.
9. Mr Sibbald then submitted that the doctrine of unjust enrichment applied during the period the Applicant were not registered landlords for the Property. The Tribunal asked how much it was Mr Sibbald suggested should be deducted from the arrears in respect of unjust enrichment. He said that was a matter for the Tribunal to decide.
10. The Tribunal asked the Respondent if there was any other reason why rent for the period September 2023 to September 2025 was not recoverable by the

Applicant. He said that the Applicant had not paid council tax and had received rent of £50,000 from him. He said that amounted to unjust enrichment. Mr Sibbald submitted that the Tribunal should not be used as an instrument to extract more money. He said that any sum due for the period before June 2023 was not recoverable.

11. Mr McIntosh submitted that unjustified enrichment had no application in this case. He said that the Applicant paid council tax during the period that the Respondent said they had not been paying it. The Tribunal asked the Applicant when they stopped paying council tax in respect of the Property. Mr Mellor said that was when the PRT was signed and the Respondent took on responsibility for council tax. The Respondent said he believed council tax was not paid until he took over liability for it in July 2023.
12. The Tribunal noted that the Respondent accepted that the last payment made in respect of rent was in September 2023. The arrears statements lodged indicated a payment of £750 on 15 September 2023 with a further payment of £1,350 falling due on 28 September 2023. The Tribunal expressed the view that the position before that as shown on the arrears statements was somewhat confusing as payments were made in respect of rent and utilities. Mr McIntosh submitted that there was no charge for utilities after 1 July 2023 and therefore the arrears were straightforward from that date. Mr McIntosh took instructions from the Applicant and said that they would restrict their claim in the present application for payment to cover the period 28 July 2023 to 28 September 2025. Effectively, the Applicant amended their claim to restrict it to the period July 2023 to September 2025. It was noted that sums falling due outwith that period may form the basis of a future application.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement which commenced on 1 July 2023.
2. The Respondent had occupied the Property for a period before 1 July 2023 firstly under a series of short term lets and then under an unwritten private residential tenancy.
3. The monthly rent payable by the Respondent to the Applicant was £1250 and was increased to £1350 on or about June 2022.
4. The Respondent paid rent at the rate of £2,000 per month in February, March, April and June 2022.

5. The monthly rent stated in the Private Residential Tenancy Agreement which commenced on 1 July 2023 was £2,000 per month.
6. By emails dated 19 and 26 February 2024 the Parties agreed that the rent that should be payable in terms of the Private Residential Tenancy Agreement which commenced on 1 July 2023 was £1,350 per month.
7. The Respondent did not pay rent to the Applicant between 28 July 2023 and 28 September 2025 aside from one payment of £750 on 15 September 2023.
8. The period 28 July 2023 to 28 September 2025 consists of 27 months.
9. The monthly rent due by the Respondent to the Applicant in the period 28 July 2023 to 28 September 2025 was £1,350 per month. The total due for the period is £36,450.
10. The Respondent made a payment of £750 on 15 September 2023 in respect of rent.
11. The Respondent made an overpayment in respect of rent of £650 per month in the months February, March, April and June 2023 resulting in a total overpayment of £2,600.

Findings in Fact and Law

1. £2,600 should be deducted from the sum due by the Respondent to the Applicant in respect of rent for the period 28 July 2023 to 28 September 2025. The balance due is £33,100.

Reasons for the Decision

12. In terms of the tenancy agreement rent was due at the rate of £2,000 per month but the Parties agreed this was an error and the rent was agreed at £1,350 per month. In the course of the hearing the Applicant withdrew their claim for payment of rent that fell due before 28 July 2023. The Respondent admitted that the last payment towards the rent was made on 15 September 2023 and nothing had been paid since then. The period 28 July 2023 to 28 September 2025 consists of 27 months. Based on a monthly rent of £1,350, the total due for that period is £36,450. The Respondent made a payment of £750 on 15 September 2023. After deduction of that payment the total rent due for the period 28 July 2023 to 28 September 2025 is £35,700.
13. The Respondent submitted that £4,200 should be deducted from the arrears in respect of the period when the Applicant were not registered landlords for the Property and £2,600 should be deducted in respect of the 4 months he paid

rent at the rate of £2,000 between February and June 2023. He also submitted that an order for payment should not be granted as a result of the operation of the doctrine of unjust enrichment.

14. There was no authority put before the Tribunal to support the submission that a landlord could not recover rent during a period that they were not registered as a landlord in respect of a particular property. Section 94 of the Anti-Social Behaviour etc (Scotland) Act 2004 did not apply as no notice had been served by the local authority. Reference is made to the decision in the conjoined eviction application. The Respondent had made a submission based on s.93 of the Civic Government (Scotland) Act 1982 which did not relate to landlord registration and was of no relevance to the point. The submission made by the Respondent regarding the doctrine of unjust enrichment was difficult to follow and the Tribunal considered it to be irrelevant.
15. The Tribunal notes that in the written submissions lodged the Respondent made reference to a number of what appeared to be previous decisions of the Tribunal. Aside from the case of *Majid v Gaffney and Britton*, the Tribunal was unable to locate any of the decisions cited.
16. The Tribunal considered the submission that £2,600 should be deducted from the sum due. The evidence indicated that the agreed rent was £1,250 and was then increased to £1,350 and then to £2,000 per month. The PRT which commenced on 1 July 2023 provided that the rent was £2,000 per month. By emails dated 19 and 26 February 2024 the Parties agreed that the rent that should be payable in terms of the PRT should have been £1,350 per month and that the proposed rent rise in February 2023 was ineffective. It was not disputed that the Respondent made payment of £2,000 in February, March, April and June 2023. As previously stated, the manner by which utilities were charged and recovered was not at all clear. The evidence indicated that an overpayment of rent was made in the period February to June 2023 amounting to £2,600.
17. The Tribunal determined to make an Order for payment in respect of rent arrears of £35,700 less £2,600 in respect of an overpayment of rent. The sum due is £33,100.

Decision

18. The Tribunal grants an order for payment of £33,100.

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.

J Devine

Legal Member

Date : 20 October 2025