



**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/20/0990**

**Re: Property at 101 The Moorings, Dalgety Bay, Fife, KY11 9GP (“the Property”)**

**Parties:**

**Mr Clive Loble, 25 Young Terrace, Cowdenbeath, Fife, KY4 9LB (“the Applicant”)**

**Mr David Grierson residing at 2 Chamfron Gardens, Stirling, Stirlingshire, FK7 7XU and Mr Kenny Leung and Mrs Linda Leung aka Jamieson and Parker, spouses, formerly residing at 2 Chamfron Gardens, Stirling, Stirlingshire, FK7 7XU; and whose present whereabouts are to the applicant unknown (“the Respondents”)**

**Tribunal Members:**

**Jim Bauld (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order should be granted for payment in the sum of ONE THOUSAND EIGHT HUNDRED AND THIRTEEN POUNDS AND SEVENTY FIVE PENCE (£1813.75) with Interest thereon at the rate of three (3) per centum per annum running from the date of the decision of the First-tier Tribunal to grant this order, being 13 November 2020 until payment.**

**Background**

1. By application dated 27 March 2020, the applicant sought an order under section 71 of the Private Housing (Tenancies) (Scotland) Act 2016 (“the Act”) and in terms of rule 111 of The First-tier Tribunal for Scotland Housing and

Property Chamber (Procedure) Regulations 2017. On 24 July 2020 the application was accepted by the tribunal and referred for determination by the tribunal.

2. A Case Management Discussion took place on 9 October 2020 and a Note was prepared and issued to all parties. That Note was dated 12 October and a continued Case Management Discussion was fixed for 6 November 2020
3. Subsequent to the issue of that note to the parties, the tribunal received a number of emails from the parties which were covered by a Supplementary Note
4. The continued Case Management Discussion set for 6 November was postponed at the request of the respondents and rescheduled for 13 November 2020 at 10.00
5. The continued Case Management Discussion took place on 13 November via telephone conference call.
6. The applicant took part in the CMD . Of the three respondents, Mrs Linda Leung and Mr David Grierson took part. Mrs Leung joined the conference call slightly after the commencement. Mr Leung did not take part
7. The tribunal explained to parties the purpose of the hearing and explained the overriding objective.
8. Thereafter the tribunal discussed various issues with the parties and listened to various submissions from the parties in respect of the application

## **Summary of Discussion**

9. The tribunal commenced by setting out the terms of the claim made by the applicant. The parties in this application had previously been parties in two other applications which had been determined after a hearing on 28 November 2019. The relevant application numbers were FTS/HPC/EV/19/3090 and FTS/HPC/CV/19/3091. In those applications the current applicant had obtained an eviction order against the three respondents in respect of their tenancy at the property. The applicant had also obtained a payment order in the sum of £6,350 in respect of rent arrears which existed at the date of the previous hearing.
  
10. He was now seeking a further payment order of £1813.75. This comprised rent for the period from 28th November 2019 to 25 February 2020. That was the period between the decision of the previous tribunal in respect of rent arrears owed until 28 November 2019 and the date that the respondents left the tenancy and the applicant recovered it. The amount of rent claimed was £1771.64.
  
11. In addition the applicant claimed sheriff officer fees which had been incurred in evicting the respondents from the tenancy following on the grant of the eviction order by a previous tribunal. The sheriff officers fees totalled £457.61. Invoices had been produced.
  
12. Additionally the applicant claimed various sums in respect of expenses he had incurred after the conclusion of the tenancy. He had incurred expense in changing locks amounting to £107.50, oven cleaning at £50, cleaning of the property at £52 and removal of a sofa and armchair at £50. Invoices had been produced.
  
13. He deducted from these sums of the deposit of £675 which had been repaid to him by the tenancy deposit scheme at the conclusion of the tenancy.
  
14. The tribunal initially questioned Mr Grierson with regard to these claims. He eventually agreed that the claim for the rent arrears could not be disputed. He agreed that he could see no reason why the applicant was not entitled to recover the sheriff officers' fees.
  
15. At that point Mrs Leung joined the case conference. She was also asked to confirm her position with regard to the rent and sheriff officers fees. She did not agree that they were due and owing but could give no cogent reason why she believed this to be the case.

16. The respondents were then questioned with regard to the invoices in respect of lock replacement, cleaning and disposal. Mrs Leung claimed that the oven cleaning costs should not be awarded. She claimed that the oven was not dirty but that plastic components within the oven had melted. She refused to accept that ovens generally do not tend to contain plastic components.
17. With regard to the claim for the replacement of locks and keys she claimed she had sent keys back to the letting agent but had no evidence of same and admitted she had not sent them by recorded delivery.
18. The discussion then turned again to the claim made at the previous case management discussion by Mrs Leung that a cheque had been sent in September 2019 by the respondents to the applicant in the sum of £8000. The tribunal member indicated to Mrs Leung that this matter had been covered at the previous CMD and that the tribunal had directed her to produce evidence supporting this claim. She had had a period of five weeks from the previous case management discussion to produce evidence of this claimed payment and had failed to do so.
19. Mrs Leung then indicated to the tribunal that she had lodged appeals against the previous eviction and payment order. She claimed she had lodged an appeal against the original decisions seeking permission to proceed to the Upper Tribunal but these requests had been refused by the First Tier Tribunal member. She claimed that she had then later sought permission from the Upper Tribunal to proceed directly with an appeal.
20. She was carefully questioned by the tribunal member with regard to this assertion. She eventually read to the tribunal member what she claimed was an email she had sent to the tribunal office on 22 July 2020. In that email she indicated that she was seeking to appeal and review both decisions. This appeal seemed to be based on a claim that the respondents should not have been evicted from the property in February because of the Covid pandemic. It was pointed out to Mrs Leung that the lockdown restrictions in respect of Covid did not come into effect until the end of March and that evictions during February 2020 were not affected by any restrictions. She also claimed that the eviction in February had rendered Mr Grlerson homeless. This assertion is clearly contradicted by the evidence within the case papers of a tenancy agreement granted to Mr Grierson in respect of a property at 2 Chamfron Gardens, Stirling which commenced on 31 January 2020.

21. Mrs Leung confirmed that she had received an email response from the tribunal administration setting out the usual provisions with regard to an appeal and asking her to complete the appropriate form to proceed to the Upper Tribunal. After some questioning she confirmed that she had not taken this any further and that there were no current or ongoing appeal proceedings in respect of the previous eviction order or the previous payment order
  
22. After further questioning Mrs Leung confirmed that she has now lodged an application with the tribunal in which she claims she is seeking damages from the applicant in respect of unlawful or illegal eviction. The tribunal member indicated to the respondent that this was not a matter which could be considered by this tribunal and had no bearing on the matter for determination before the tribunal.
  
23. The tribunal then asked questions of the applicant with regard to the various elements of his claim. He stated that the rent had been calculated based on the agreed monthly rent of £675. With regard to his claim for the replacement of the lock he confirmed he had carried this out himself and he regarded the charge he was making of £70 as a fair and reasonable one and that it would have been higher had he instructed a professional locksmith. The locks which he had purchased were charged at the cost he had paid
  
24. With regard to the oven cleaning he confirmed that in his view the respondent's claim that the oven contained plastic components was simply untrue. He confirmed that the oven had been replaced during a previous tenancy and that it was a fairly standard oven. He could not recollect the name of the manufacturer. He confirmed that after cleaning the oven, it has been used by the current tenant of the property and is functioning properly.
  
25. With regard to the cleaning invoice of £52 he confirmed he had instructed the person named on the invoice to carry out the cleaning of the flat and he regarded the cost as reasonable. Similarly the invoice in respect of the uplift and disposal of the sofa and armchair at £50 was considered by him to be a reasonable cost.
  
26. The tribunal asked the respondents to provide reasons why the tribunal should not make the payment order sought. The amount of rent was not in dispute. The fees charged by sheriff officers were in accordance with the standard table of fees and the amount being claimed by the applicant in respect of lock change, cleaning and disposal seemed to be reasonable. The respondents could provide no reason why the tribunal should not make an

order for the amount claimed. Mrs Leung claimed that an order should not be made as her husband, Mr Kenny Leung had not been able to have his say. It was pointed out to Mrs Leung that intimation of the CMD had been made to Mr Leung and he had presumably decided not to attend. Indeed Mrs Leung in an email to the tribunal prior to the CMD had stated that her husband had decided he did not wish to take part

27. The applicant then indicated to the tribunal that if a payment award was to be made he would seek interest at the rate granted in the previous order of 8% per annum.

28. The tribunal asked the respondents for their comments on this request. Mr Grierson described the rate of 8% as "usury" and suggested a rate of 0.5%. Mrs Leung had no comment to make.

29. The tribunal member indicated to parties at the conclusion of the CMD that an award would be made for the sum claimed and that a formal decision would be issued with regard to the interest to be added.

30. The tribunal then concluded the CMD and thanked parties for their attendance

### **Findings in fact and law**

31. The Applicant and the Respondents as respectively the landlord and tenants entered into a tenancy of the property which commenced on 7 September 2018

32. The tenancy was a private residential tenancy in terms of the Act

33. The agreed monthly rental was £675

34. The applicant had obtained a payment order in the sum of £6,350 in respect of rent arrears which existed at 28 November 2019. That order was granted by the tribunal under case reference FTS/HPC/CV/19/3091

35. Further rent arrears had accrued in the period from the 28 November 2019 until 25 February 2020. The rent arrears for that period amounted to £1771.64.
36. The applicant had incurred sheriff officers' costs in enforcing the eviction order granted by the previous tribunal. These costs amounted to £457.61.
37. The applicant had incurred further costs after the conclusion of the tenancy. These costs involve the replacement of locks, the removal of rubbish from the property, the cleaning of the oven, the cleaning of the flat and the removal and disposal of a sofa and armchair. These costs amounted to £259.50.
38. The applicant had recovered the sum of £675 from the tenancy deposit paid by the respondent.
39. The respondents are accordingly liable to pay to the applicant the sum of £1813.75 in respect of rent arrears, sheriff officers fees, and sundry costs

### **Reasons for decision**

40. In this application the applicant seeks a payment order in respect of rent arrears which accrued from a date on which a previous tribunal granted an eviction order and the date on which the tenancy was then brought to an end by the enforcement of that eviction order.. Additionally the applicant seeks a payment order in respect of the sheriff officers costs which he necessarily incurred in enforcing the previous tribunal order and the sundry costs he incurred after the conclusion of the tenancy in connection with replacement of locks, cleaning of the property and removal and disposal of rubbish.
41. Two case management discussions took place. The applicant attended both. Mrs Leung attended both. Mr Grayson attended the second case management discussion. Mr Leung attended neither.

42. Much of the discussion at the case management discussion centred around Mrs Leung's claims that the respondents had arranged for a cheque to be sent to the applicant's agents. The sum claimed to be involved was £8000. It was claimed this cheque was sent from a post office in Hong Kong in September 2019 to the respondent's agents. No documentary evidence was produced to the tribunal confirming the existence of this cheque or confirmation that any such sums were lodged in the claimed Bank of China account held by Mr Leung in Hong Kong. No evidence was produced of any correspondence being posted from Hong Kong to either the applicant or his agents. The initial case management discussion was adjourned to a later date to enable such evidence to be produced.
43. The tribunal accepted the evidence of the applicant that he had received no payment towards the rent arrears which accrued both in respect of the amount awarded by the initial tribunal in November 2019 and the amount which had accrued between that tribunal and the end of the tenancy.
44. The tribunal accepted the evidence of the applicant that he had incurred the other costs in respect of the sheriff officers fees and the changing of locks, cleaning and removal and disposal of items from the tenancy. The tribunal accepted that the invoices produced by the applicant were accurate and that the charges were reasonable.
45. The tribunal noted that during both case management discussions that Mrs Leung regularly made claims and assertions which were irrelevant to the matter in hand. The tribunal had indicated its previous note in relation to the previous CMD that Mrs Leung's evidence had sounded incredible and unbelievable. The tribunal had significant difficulty in believing this respondent in the vast majority of her answers and submissions.. She was frequently evasive in answering questions and in many cases seemed to have difficulty in providing answers to straightforward questions. She continually wished to raise matters which were irrelevant to the subject matter at hand and which related to other applications
46. The tribunal did not accept the proposition that the respondents had tendered a cheque in payment of the rent arrears nor that they were willing to meet the rent arrears at any time previously. The tribunal notes that the respondents have had a period of almost a year since the original tribunal to make payments to the applicant and no payments have been made at all.



47. The tribunal had no hesitation in accepting that the respondents had failed to pay any rent from the period after the initial tribunal until the conclusion of the tenancy. The tribunal notes that the respondents have provided no evidence of any payments made to the applicant. The tribunal regards the additional sums claimed in respect of sheriff officers' fees and other costs to be entirely reasonable and that the respondents are liable to meet these costs both in terms of general law and in terms of the tenancy agreement between the parties
48. The tribunal was asked to include interest on any award made. While the tribunal notes that the previous payment order was made with an addition of interest at the rate of 8% per annum the tribunal in this case takes the view that the interest to be added to this award should be at a lower rate. The tribunal had decided to allow interest on the sum awarded at the rate of 3% per annum being an approximation of the current borrowing rate for short-term commercial loans.
49. The tribunal also determined that a final decision could be made on this matter at the Case Management Discussion without referring the matter to a full hearing. The tribunal accordingly exercises the power contained within rule 17(4) of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017. The tribunal are satisfied that all parties were given reasonable notice of the date time and place of the case management discussions and were given ample opportunity to provide supporting evidence in respect of assertions made.
50. The tribunal accordingly determined that it was not necessary to fix a full hearing and that the matter could be decided at the case management discussion

## **DECISION**

The tribunal makes an order for payment of the sum of **ONE THOUSAND EIGHT HUNDRED AND THIRTEEN POUNDS AND SEVENTY FIVE PENCE (£1813.75)** with Interest thereon at the rate of three (3) per centum per annum running from the date of the decision of the First-tier Tribunal to grant this order, being 13 November 2020 until payment.

## **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.**

Jim Bauld

**13/11/2020**

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**Legal Member/Chair**

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**Date**