



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 16 of the Housing (Scotland)  
Act 2014**

**Chamber Ref: FTS/HPC/CV/19/1776**

**Re: Property at 7/3 Spey Terrace, Edinburgh, EH7 4PX (“the Property”)**

**Parties:**

**Mr Nazim Aliyev, Mrs Sian Aliyeva, 114/4 Restalrig Road, Edinburgh, EH7 6UN  
 (“the Applicants”)**

**Miss Maria-Iona Harsan, Mr Stefan Popovici, Mr Niku Porusniuk, Address  
Unknown, Address Unknown (“the Respondents”)**

**Tribunal Members:**

**Joel Conn (Legal Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that**

**Background**

- 1) This is an application by the Applicants for civil proceedings in relation to an assured tenancy in terms of rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Procedure Rules”), namely an order for payment of rent arrears and a further sum in damages. The tenancy in question was a Short Assured Tenancy of the Property by the Applicants to the Respondents dated 10 October 2017.
- 2) The application was dated 22 May 2019 and lodged with the Tribunal shortly thereafter. The application was accompanied by a photograph and some invoices as vouching. There was no rental statement with application but the Applicants had provided an email setting out the rent payments from October 2017 until the Respondents left the Property in June 2018. The lease for the said tenancy also accompanied the application and detailed a rental payment of

£700 per month. The date of payment of rent was not completed in the pro-forma lease but the rent was stated to be due in advance and the lease commenced on 30 September 2017, suggesting a payment date of the last day of each month.

- 3) The application expressly sought an order for £4,904 made up as follows:
  - a) £3,400 for "Unpaid rent for nearly 5 months";
  - b) £600 for costs of eviction;
  - c) £304 for "New mattresses"; and
  - d) £600 for "Deep clean".
- 4) On 22 July 2019, further to correspondence with the Tribunal, the Applicants withdrew the claim for £600 for cleaning costs. The application, as so amended, was accepted in the reduced sum of £4,304.

### **The Hearing**

- 5) On 23 October 2019, at a case management discussion ("CMD") of the First-tier Tribunal for Scotland Housing and Property Chamber, sitting at George House, Edinburgh, I was addressed by the First Applicant, who confirmed he spoke for himself and the Second Applicant. There was no appearance by any of the Respondents. The First Applicant confirmed that no contact had been received to them from or on behalf of the Respondents.
- 6) Service by Advertisement had been sought by the Applicants in the application. It had been granted and undertaken. A Certificate of Service by Advertisement was prepared by the Tribunal's clerk and provided to me.
- 7) As of 10:05, there being no appearance or contact from the Respondents, I was satisfied to consider the application in full at the CMD in the absence of the Respondents.
- 8) The First Applicant confirmed that the order for £4,304 was still sought and I took the First Applicant though the three remaining claims in his application, seeking clarification and further submissions.
- 9) In regard to the rent arrears sought of £3,400, I clarified with the First Applicant the figures in his email to the Tribunal. He confirmed that the Applicants had received payment in full for the period through to 30 December 2017. Rent for January 2018 was due in full on 31 December 2017 but during the month of January 2018 only two payments, totalling £550, were received. As of 31 January 2018, the Respondents were thus in arrears of £150. Thereafter, no payment of rent was received for February to June 2018, with the Respondents leaving, after initial service of notices, on 20 June 2018. By my calculation, £150 plus five months' unpaid rent of £700/month totalled £3,650. The First Applicant confirmed my arithmetic and that the figure of £3,400 in the application was an error. I asked whether the First Applicant wished to amend the application to the higher figure, with the application continued for reintimation. He confirmed that he did not seek that and was satisfied to restrict the claim in arrears to £3,400.

- 10) In regard to the £600 claim for eviction costs, the First Applicant explained that they had engaged a solicitor in Glasgow who asked for £1,000 plus VAT (£1,200) in advance to cover all work in the eviction. After initial work, the Respondents left the Property before eviction proceedings were raised. The solicitor refunded half the payment to account. A copy of the invoice of £1,200 and evidence of the refund of £600 was produced. The sum of £600 was thus entirely for pre-litigation work and was not a sum awarded by any court or tribunal. I asked the First Applicant to provide submissions on why the sum was recoverable. In particular, I explained to the First Applicant that I could not identify any clause in the Tenancy Agreement that made the Respondents contractually liable to the Applicants for legal or debt recovery costs. The First Applicant submitted that the sum was due because they were not being paid rent and were forced to instruct a solicitor to recover possession. He could not, however, show any clause of the Tenancy Agreement that provided a contractual right to recovery of such out of pocket pre-litigation expenses.
- 11) In regard to the £304 claim for new mattresses, an invoice for two new mattresses, along with a small fee for delivery and for uplift of old mattresses was provided, totalling £304. A photograph of a stained mattress was provided. The First Applicant was not certain what the staining was but suggested "wine" or "cola". He said the second mattress was in a similar state, which he described as "filthy". He said that the mattresses were "not old" when the Respondents moved into the Property and he thought they may have been purchased new in 2015 (thus being 2.5 to 3 years old by the end of the Tenancy).
- 12) The application did not seek interest on the arrears under any contractual provision. No motion seeking expenses was made.

### **Findings in Fact**

- 13) On 10 October 2017, the Applicants let the Property to the Respondents by lease (stating it was a Short Assured Tenancy) with a start date of 30 September 2017 and an end date of 30 June 2018 ("the Tenancy").
- 14) Under the Tenancy, the Respondents were to make payment of £700 per month in rent to the Applicants in advance, being a payment by the last day of each month to cover the month to follow.
- 15) As of 20 June 2018, there was unpaid rent of £3,650 due by the Respondents to the Applicants in terms of the Tenancy, being unpaid rent due for the period from 31 December 2017 until 29 June 2018. The sum comprised an underpayment of £150 for rent due on 31 December 2017 plus five months rent of £700 due on 31 January 2018 and each of the four months following.
- 16) On 22 May 2019, the Applicants raised proceedings for an order for payment of rent arrears of £3,400 and for further damages of £1,504 arising from non-payment of rent and the condition the Respondents had left the Property. The

sum of £1,504 in damages was reduced by amendment to £904 prior to acceptance of the application.

- 17) On 16 September 2019 the Tribunal intimated the CMD upon with Respondents through Service by Advertisement.
- 18) The Respondents provided no evidence of payment of any part of the said unpaid rent of £3,650.
- 19) The terms of the Tenancy included at clause 7 a provision that: "The tenant agreed to replace or repair... any of the contents which are destroyed, and damaged... during the tenancy, fair wear and tear excepted".
- 20) The terms of the Tenancy contain no provision whereby the Respondents indemnify, or otherwise agree to contribute to, the Applicants' legal expenses in the event of a breach of the Tenancy.
- 21) The Property contained at least two mattresses which were around three years as at the end of the Tenancy.
- 22) The Respondents damaged, or allowed others to damage, the said two mattresses by excessive spilling of liquid upon the mattresses so as to render them unsuitable for continued use within the Property. Such actions constituted a breach of clause 7 of the Tenancy.
- 23) Through the Respondents' said breach of the Tenancy, the Applicant incurred costs of obtaining two replacement mattresses and disposal of the soiled mattresses in the amount of £304 (inclusive of VAT).
- 24) The cost of £304 was reasonably incurred by the Applicants and forms the Applicants' reasonable loss and damage arising from the Respondents' breach of contract.

### **Reasons for Decision**

- 25) The application was in terms of rule 70, being an order for civil proceedings in relation to assured tenancies. I was satisfied, on the basis of the application and supporting papers, and the submissions provided by the First Applicant at the CMD, that:
  - a) Rent arrears of £3,650 were outstanding as at the date of the CMD. As the application sought only £3,400 of rent arrears, and the First Applicant sought to restrict their arrears claim to that amount, I was satisfied that the sum of £3,400 was recoverable; and
  - b) Costs to dispose of soiled mattresses and replace two mattresses of £304 were incurred by the Applicants and that the sum of £304 was recoverable as damages.
- 26) I was not satisfied that the Applicants had any contractual claim for the legal costs and I do not award any sum in regard to the £600 claimed for legal fees.

27) As the application clearly set out the sums I was willing to award, and was supported by evidence all of which was included within the papers intimated to the Respondents, I was satisfied that the necessary level of evidence for such civil proceedings had been provided. The Procedure Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal and I was satisfied to make a decision at the CMD to award the sum sought of £3,704 against the Respondents.

### **Decision**

28) In all the circumstances, I was satisfied to make the decision to grant an order against the Respondents for payment of £3,704 with interest at 8% running from today's date.

### **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.**

**Joel Conn**

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Legal Member/Chair

\_\_\_\_\_  
23 October 2019  
Date