

Housing and Property Chamber

First-tier Tribunal for Scotland



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/20/0564

Re: Property at Flat 4/1, 10 Haughview Terrace, Glasgow, G5 0HB (“the Property”)

Parties:

Mr Philip Rough, 25 Pearl Street, Callendar, FK17 8BS (“the Applicant”), and

Mr Bartosz Marian Lato and Mrs Sandar Lato both residing at 34 (5/1) Scaraway Terrace, Glasgow, G22 7HB (“the Respondents”)

Tribunal Member:

G McWilliams- Legal Member

Decision in absence of the Respondent

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application be dismissed.

Background and Reasons for Decision

1. The Applicant had applied for a payment order in respect of claimed arrears of rent in terms of Rule 111 (Application for civil proceedings in relation to a private residential tenancy) of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure (“the 2017 Rules”).
2. A Case Management Discussion (“CMD”).proceeded remotely by telephone conference call at 2pm on 10th December 2020.The Applicant did not attend and there was no explanation for his absence. The Tribunal Clerk called the Applicant’s stated contact telephone number on two occasions after 2pm on 10th December 2020 but was unable to speak with the Applicant as the calls were

diverted to the Applicant's messaging service. The Respondent Mr B Lato attended.

3. In the Application, the Applicant sought payment of arrears of rent of £2095.00. On 30th October 2020 the Tribunal issued a Notice of Directions to the Applicant, dated 19th October 2020, requiring the Applicant to provide written confirmation of the payment order sum currently sought with a supporting rent statement, by 5th November 2020. The Applicant did not comply with the Notice. The Applicant has not been in contact with the Tribunal since 7th October 2020.
4. At the CMD the Respondent Mr Lato stated that when he and his wife vacated the Property in August 2019 they were in two months' rent arrears, of £1790.00. He said that the Applicant had retained the tenancy deposit monies of £895.00 and that he had reached agreement with the Applicant for repayment of outstanding rent, of £895.00, by instalments. Mr Lato said that the Applicant had agreed that no other monies would be sought by the Applicant as he and his wife had left the Property in very good condition. He stated that he had kept a copy of his text message communications with the Applicant confirming the agreement for repayment of rent arrears of £895.00. He said that he was anxious to have the whole matter resolved and that he wished to send an email to the Tribunal's office with the copy text communications and any papers he has confirming that the Applicant retained the deposit monies towards outstanding rent. He said that he would do this when he returned home in the evening of 10th December 2020.
5. The Tribunal determined that in order to deal with the proceedings justly at the CMD they would continue consideration of the Application until 11th December 2020 to allow time for Mr Lato to send the copy text communications and any other deposit papers to the Tribunal's office. Mr Lato undertook to do so in the evening of 10th December 2020. The Tribunal stated that if Mr Lato did so, and those papers were in the terms described by Mr Lato, and there was no communication received from the Applicant on 10th December 2020, they would dismiss the Application on 11th December 2020. The Tribunal stated that if Mr Lato did not send the additional papers in the evening of 10th December 2020 they would order that a further CMD be arranged.
6. The Respondent Mr Lato sent a copy of the relevant text communications in the evening of 10th December 2020. This documentation confirmed that the Applicant had the deposit monies returned to him by Purple Bricks and that the parties had agreed that the Respondent Mr Lato would repay outstanding rent of £895.00 to the Applicant. In the circumstances, and given that the Applicant had not complied with the Notice of Directions, nor attended at the CMD, and as there was no contradictor to the submission and evidence now given by Mr Lato, the Tribunal considered that it was fair and just to dismiss the Application. Accordingly the Tribunal dismissed the Application in terms of Rule 27 of the 2017 Rules.

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.

Gerald McWilliams

11th December 2020

Legal Member

Date