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 16 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/CV/19/3957**

**Re: Property at 183, Flat 6, Broughton Road, Edinburgh, EH7 4LN ("the Property")**

**Parties:**

**Mr Massimo Circi, 10 Elgin Terrace, Edinburgh, EH7 5NN ("the Applicant")**

**Mr Steven Sibbald, 183, Flat 6, Broughton Road, Edinburgh, EH7 4LN ("the Respondent")**

**Tribunal Members:**

**John McHugh (Legal Member) and Ann Moore (Ordinary Member)**

## Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent should be ordered to pay the sum of £5850 to the Applicant.**

## Background

The Applicant holds the landlord's interest and the Respondent the tenant's interest in a short assured tenancy dated 12 November 2017.

The Applicant claims that the sum of £5850 is currently outstanding by the Respondent to the Applicant in respect of the Respondent's occupation of the Property.

## The Hearing

A Hearing took place by conference call on 24 August 2020. The Applicant and Respondent were both present. Neither party called any witnesses.

At the Case Management Discussion on 6 February 2020, the parties had been in disagreement about the amount of arrears and how payments should be allocated to the Respondent's indebtedness. The Respondent had offered a Time to Pay Application at the rate of £1000 per month in respect of the balance he accepted.

At the Hearing, the Respondent explained that his Time to Pay Application would apply only to the sum he was prepared to agree as due, being £2250. He was not able to offer any time to pay application if a higher amount were awarded.

The Respondent argued that either the tenancy in fact continued by fact of the Applicant having demanded "rent" at the rate of £900/month since 12 April (in which case he argues that the notice to quit etc are ineffective) or, alternatively, the sums claimed by the Applicant relating to the period post-12 April 2020 must properly be characterised as damages representing violent profits in respect of his unauthorised continued occupation. If the latter, the Respondent considers that the COVID -19 outbreak would have made it difficult for the Applicant to find a replacement tenant. The Respondent argues that the Applicant has not sustained a loss equivalent to the amount of rent which would have been due under the parties' tenancy agreement.

The Applicant was allowed to amend the sum claimed to £5850 by his email request of 21 July 2020.

He sought to further amend his sum claimed by £900 to £6750 by his email of 16 August 2020. This, however, came less than 14 days before the hearing. Rule 14A of the Tribunal Procedure Rules require 14 days' notice of the amendment to be given and, accordingly, the amendment was refused.

The Applicant considers that the lease terminated on 12 April 2020. In so far as he described claims for sums due in respect of the occupation of the Property by the Respondent after that time as "rent", he regarded this as the proper sum due in respect of the period of occupation by the Respondent and had made no distinction between rent payments due before 12 April and damages payments equivalent to rent after 12. He regarded the amounts he claimed for as properly due. He thought those sums a fair measure of his loss while the Respondent chose to remain in occupation after the lease had ended.

The Applicant also requested that interest should be granted on the sums sought.

**Findings in Fact**

The Applicant holds the landlord's interest and the Respondent the tenant's interest in a short assured tenancy dated 12 November 2017.

The Tenancy Agreement provides that rent is due at the rate of £850 per month. This increased to £900 per month in January 2019.

On 22 January 2020 the Applicant served a Notice to Quit and section 33 Notice requiring the Respondent to remove with effect from 12 April 2020.

The sum of £2250 is currently outstanding by the Respondent to the Applicant in respect of unpaid rent up to 12 April 2020.

Since 12 April 2020 the Respondent has remained in occupation of the Property without making any payments to the Applicant in respect of that period.

**Reasons for Decision**

The parties agree that the schedule produced by the Applicant which shows the dates and amounts due and paid is accurate (other than that the Respondent considers that some of the sums described as "rent" are not truly rent as opposed to damages). The schedule shows that, applying all payments made by the Respondent to the oldest debt, which is his wish, the rent outstanding to 12 April 2020 is £2250.

The Applicant has established that rent due under the tenancy agreement is unpaid to the extent of £2250 and the Respondent agrees.

The Tribunal does not accept the argument that the lease continued after 12 April 2020. A valid Notice to Quit and section 33 Notice had been served. The Applicant conducted himself consistently on the basis that the lease was at an end other than that in documents addressed to the Tribunal and to the Respondent he described the sums relating to the Respondent's occupation as increasing" rent arrears". Technically, those sums were damages in respect of the unauthorised occupation. It is evident that the Respondent knew that the Applicant regarded the lease as having ended on 12 April. For example, the applicant was continuing with his Application for possession before the Tribunal. The Respondent identified no actions which he had taken consistent with a belief on his part that the lease was continuing and that the Applicant was no longer insisting upon possession. The Respondent, for example, did not pay anything in respect of "rent" post 12 April 2020.

As regards the claim that the payments sought for occupation post 12 April 2020 did not represent the Applicant's true loss, the Respondent, despite being invited to do so, declined to suggest any figure which, in his view, would properly represent the Applicant's entitlement to damages in respect of his occupation of the Property. The Respondent does not recognise that he has gained anything at the expense of the Applicant by living in the Property without making any payment since April.

The Respondent has offered no evidence that the Applicant would have been unable to re-let the Property had he vacated it on 12 April 2020. He did not offer any evidence of the absence of demand on the part of tenants. Despite the pandemic, it appears to the Tribunal that rental demand remained in existence and the Tribunal does not accept that the Applicant would have been unable to find a replacement tenant who would have paid rent on similar terms to the market rent paid by the Respondent.

In the circumstances, the Tribunal considers it reasonable to assess the Applicant's losses as equivalent to the rent which had been payable by the Respondent during

the currency of the tenancy agreement ie £900 per month and an award is made in that respect in the form of damages for the four monthly payments which would have fallen due on 12 May to 12 July 2020, totalling £3600.

As regards the application dated 16 August 2020 to amend the sum claimed by a further £900, the Applicant argued that, because the hearing had been fixed at short notice, the Tribunal had allowed parties to submit amendments up to seven days before the hearing  He did not identify the particular communication from the Tribunal to this effect but made reference to having received email correspondence and telephone calls from Tribunal Clerks to this effect. The Applicant's submission is incorrect in this regard. The Notes of the CMD make reference to Rule 14A and specifically direct the Applicant that if he wishes to amend the sums claimed, he must do so not less than 14 clear days before the hearing.

At the hearing, the Applicant sought to claim interest upon the sums claimed. He accepted that the tenancy agreement makes no provision for this.  He had not sought interest in his application.  Technically, the request is an application to amend and, again, requires 14 days' notice, which has not been given. In any event, the Tribunal would not be inclined in the foregoing circumstances to award interest.

**Decision**

The Respondent should be ordered to pay to the Applicant the sum of £5850.

**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.**

_____ **Date : 24 August 2020**

**John McHugh, Legal Member/Chair**