

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 (“the 2014 Act”) and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Rules”)

Chamber Ref: FTS/HPC/CV/18/2422

Re: Property at 86 Glebe Road, Whitburn, West Lothian, EH47 0AY (“the Property”)

Parties:

Mr Robert Gillies, 7/42 Murieston Road, Edinburgh, EH11 2JJ (“the Applicant”)

Ms Kellie Delaney, 2 Barton Terrace, Fauldhouse, West Lothian, EH47 9LT (“the Respondent”)

Tribunal Members:

Susanne L M Tanner Q.C. (Legal Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”) determined that the Respondent should pay to the Applicant the sum of TWO HUNDRED AND NINETY THREE POUNDS (£293.00) STERLING; and made an Order for Payment in respect of the said sum.

1. Procedural background

- 1.1. The Applicant made an Application to the tribunal on 10 September 2018 in terms of Section 16 of the 2014 Act and Rule 70 of the 2017 Rules, seeking an order for payment against the Respondent in the sum of £293.00 in respect of rent arrears.

- 1.2. The Application documentation submitted by the Applicant comprised:
 - 1.2.1. A copy of a rent account for the Respondent and the Property for the period 18 May 2018 to 18 July 2018;
 - 1.2.2. Pages from the Private Residential Tenancy agreement between the parties dated 18 May 2018 (pp 5, 6, 7, 25, 26);
 - 1.2.3. Copy bank statements of the Applicant for the period 1 May to 31 July 2018 with highlighted payments made by BACS to and from the Applicant and the Respondent.
- 1.3. On 1 October 2018, the Application was accepted for determination by the tribunal.
- 1.4. A CMD was held on 21 November 2018. Parties were notified of the date, time and place of the CMD. The Respondent were invited to submit written representations to the Application by 16 November 2018. No written representations were submitted. The Applicant attended the CMD. The Respondent did not attend.

2. CMD – 21 November 2018 at 1130h at George House, Edinburgh

- 2.1. The Applicant attended the CMD.
- 2.2. The Respondent did not attend the CMD and it proceeded in her absence.
- 2.3. At the CMD an up to date bank statement was produced by the Applicant representative for the period to 21 November 2018 and was lodged as a document with the consent of the tribunal.
- 2.4. The Applicant made submissions on the basis of the Application and the supporting documents, including the updated bank statement.
- 2.5. The Applicant stated that the sum sought in the Application was due to him on the following basis:
 - 2.5.1. The Respondent rented the Property in terms of a Private Residential Tenancy ("PRT") agreement dated 18 May 2018.
 - 2.5.2. The tenancy start date was 18 May 2018.
 - 2.5.3. The rent payable in terms of the PRT £580 per calendar month payable on 18th of each month.

- 2.5.4. The Respondent moved in on 18 May 2018. The first months' rent was paid by bank transfer into the Applicant's nominated bank account ("Gillies R & AL Account number 00631344") for which statements to the date of the CMD had been produced. The payment was for the full amount of £580 and is shown highlighted on the bank statement on 18 May 2018.
- 2.5.5. The rent due on 18 June was £580. On 15 June 2018 the Respondent paid by BACS transfer to the Applicant's account the sum of £537, which was £43 short of the total amount of rent due to be paid by 18 June 2018. The Respondent did not provide any explanation to the Respondent about why the payment was short, although the Respondent noted that it was made three days prior to the due date and expected the balance to be paid on or before 18 June 2018.
- 2.5.6. Later on 15 June 2018, the Respondent telephoned the Applicant. The Applicant was at a funeral and was caught off guard. The Respondent told the Applicant that she had broken down in her car and needed money in respect of the breakdown. She asked if the Respondent would mind returning part of the rent payment to her. She asked for £250.00 to be refunded. She told the Applicant that her dad would return it later that night by bank transfer. The Applicant agreed to return £250.00 to her that day by bank transfer on the understanding that it would be repaid to him that night by her father. He said that he agreed because the full amount of £580 was not due until 18 June 2018 and the Respondent had undertaken that her dad would send the money that night. The Applicant returned a sum of £250.00 back to the Respondent by BACS. The debit from his account to the Respondent is shown on his bank account on 15 June 2018. The Applicant did not receive return of the £250.00 that night or at any point. The Applicant now thinks the story about the car breakdown was a tall story and he regrets having made the refund to the Respondent. The last payment made by the Respondent in terms of the tenancy was the payment of £537.00 on 15 June which was followed by the credit to her of £250.00. She did not pay the other £43.00 which was also due on 18 June 2018. The Applicant pointed to the bank statements to date which do not show any further credit from her.
- 2.5.7. The Respondent left the property some time before 17 July 2018. The Applicant was not in the country as he was in Australia for the whole of July. The Respondent did not serve written notice. The Applicant told the Respondent that if she handed the keys back by 17 July 2018 he would consider the tenancy to be ended as at that date. She handed the keys back by 17 July 2018.

2.5.8. The Applicant is seeking £293.00 which represents the sum of £580.00 rent due on 18 June 2018 for the period to 17 July 2018, less £573.00, paid, plus £250.00 in respect of the sum refunded to her as discussed.

3. Findings-in-Fact

- 3.1. A Private Residential Tenancy agreement between the parties in respect of the Property was signed on 18 May 2018 and commenced on 18 May 2018.
- 3.2. Rent was payable by the Respondent to the Applicant at the rate of £580.00 per calendar month, payable in advance on 18th day of each calendar month.
- 3.3. The first rent payment of £580.00 was paid by the Respondent to the Applicant on 18 May 2018 by bank transfer to the Applicant's bank account.
- 3.4. On 15 June 2018 the Applicant paid to the Respondent the sum of £537.00 in respect of rent due on or before 18 June 2018. The sum was £43.00 short of the amount of rent due to be paid on or before 18 June 2018.
- 3.5. On 15 June 2018 the Respondent refunded to the Applicant's bank account the sum of £250.00 of the advance rent payment in order that she could pay for her car break down, on the agreed basis that the money would be paid back to the Applicant by the Respondent's father the same night.
- 3.6. The sum of £250.00 was due to be repaid by the Respondent (or on her behalf) to the Applicant, together with the sum of £43.00 in respect of the remainder of the rent, on or before 18 June 2018.
- 3.7. The Respondent did not re-pay the £250.00 or pay the £43.00 balance of the rent due to the Applicant by 18 June 2018. No such payments were made to the Applicant on her behalf.
- 3.8. The Respondent vacated the Property by 17 July 2018.
- 3.9. The rent arrears as at 17 July 2018, when the tenancy ended, amounted to £293.00.
- 3.10. The Respondent has not made any payments to the Applicant in the period to 21 November 2018.

4. Reasons for Decision

4.1. The tribunal accepted the Applicant's submissions, supported by evidence, relative to the payment of £537.00 made by the Respondent to the Applicant and the payment of £250.00 by the Applicant to the Respondent on 15 June 2018. The tribunal accepted the Applicant's explanation as to the reason for the £250.00 being refunded to the Respondent for the stated purpose on the agreed understanding that the Respondent's father would make payment of the said sum to the Applicant the same evening. As a result of the payments made by and to the Respondent on 15 June 2018, as at 18 June 2018 the Respondent owed £293.00 to the Applicant in respect of unpaid rent. Similarly, the tribunal accepted the Applicant's evidence that no further payments had been made by the Respondent to the Applicant in respect of the sum due on 18 June 2018 and that the amount due by the Respondent to the Applicant as at 17 July 2018, and as at the date of the CMD, was therefore £293.00.

4.2. As the tribunal was satisfied that the Respondent owes £293.00 to the Respondent by way of rent arrears, the tribunal made an Order for Payment in respect of the rent arrears in the sum of £293.00.

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.

S Tanner

21 November 2018

Susanne L M Tanner Q.C.
Legal Member/Chair