

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 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/19/2027

Re: Property at 4 Langshot Street, Kinning Park, Glasgow, G51 1LY (“the Property”)

Parties:

Mr Mohammed Bhoja, Ms Lubna Khan, 23 Brackenbrae Road, Bishopbriggs, Glasgow, G64 2BS (“the Applicants”)

Mr Nicolas Garcia-Minaur, formerly residing at 4 Langshot Street, Kinning Park, Glasgow, G51 1LY and whose current whereabouts are unknown (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision (in absence of the Respondent)

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

Background

This is an application for a payment order dated 1st July 2019 and brought 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 (Procedure) Regulations 2017* as amended.

The Applicants originally sought in their application payment of arrears in rental payments of £890.00 as at the date of the application.

After recovering possession of the Property on 18th August 2019 when it was discovered that the Respondent had quit the premises, the Applicants amended that figure in terms of Rule 14A of *The First-tier Tribunal for Scotland Housing and*

Property Chamber (Procedure) Regulations 2017 as amended to £1046.03, which is the sum due until vacant possession was obtained, by their e-mail to the Tribunal of 21st August 2019.

The Applicants provided with their application copies of the private residential tenancy agreement and rent arrears statement. Thereafter, with their amendment of the sum sought on 21st August, they provided an updated rent arrears statement together with bank statements showing the payments made by the Respondent.

The private residential tenancy agreement had been correctly and validly prepared in terms of the provisions of the *Private Housing (Tenancies) (Scotland) Act 2016*, and the procedures set out in that Act appeared to have been correctly followed and applied.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 30th July 2019, and the Tribunal was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 3rd September 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicants both appeared, and were not represented. The Respondent did not appear, nor was he represented. The Respondent has not responded to this application at any stage either in writing or by any other form of communication.

The Applicants confirmed that rent was due until 18th August 2019, being the date when the Applicants had regained possession of the Property, and referred to the further updated rent arrears statement to that date confirming that rent arrears total £1,046.03.

In response to an enquiry from the Tribunal regarding intimation of the amendment to the Respondent, the Applicants provided a print-out of a text conversation between them and the mobile telephone number of the Respondent given in the tenancy agreement, where they intimate to him the increased rent arrears figure sought on 21st August 2019.

The Respondent responded by text message to the Applicants on 26th August 2019, apparently acknowledging their earlier text message of 21st August 2019 and accepting the rent arrears figure of £1,046.03.

The Tribunal noted that the tenancy agreement in clause 8 narrates that "The rent is €595.00 per calendar month payable in advance". The Applicants advised that they had not noticed the use of the currency symbol for euros instead of that for pounds sterling, and that this was simply a typing error.

The agreement was for payment of £595.00 per month, and they referred to the various bank statements they had provided which clearly showed previous monthly payments of rental by the Respondent of £595.00 per month.

The Applicants invited the Tribunal with reference to the application and papers to grant an order for payment of the sum of £1,046.03.

Statement of Reasons

The jurisdiction of the Tribunal in relation to Private Residential Tenancies, such as that which applied to the Property, is set by statute. Section 71(1) of the *Private Housing (Tenancies) (Scotland) Act 2016* provides:

“First-tier Tribunal's jurisdiction

- (1) In relation to civil proceedings arising from a private residential tenancy—
- (a) the First-tier Tribunal has whatever competence and jurisdiction a sheriff would have but for paragraph (b),
 - (b) a sheriff does not have competence or jurisdiction.
- (2) For the purposes of subsection (1), civil proceedings are any proceedings other than—
- (a) the prosecution of a criminal offence,
 - (b) any proceedings related to such a prosecution.”

The Tribunal accordingly has jurisdiction to hear civil proceedings arising from a private residential tenancy such as between the parties in this application.

The Tribunal considered the terms of the private residential tenancy agreement, the copy updated rent arrears statement provided, and the submissions made by the Applicants, and was satisfied that these disclosed an outstanding balance of rent arrears in the sum sought of £1,046.03.

Accordingly, the Tribunal will make an order for payment of that sum.

With regard to the obvious error in the tenancy agreement where the euro currency symbol has been used instead of the pound sterling currency symbol in respect of the rent due, I note the decisions of the House of Lords in the cases of *Mannai Investments Co Ltd v Eagle Star Life Assurance Co Ltd* (1997) AC 749 and *Investors Compensation Scheme Limited v West Bromwich Building Society* (1998) 1 WLR 896, the *ratios* of which were applied in Scotland in the case of *Emcor Drake & Scull v Edinburgh Royal Joint Venture* 2005 SLT 1233.

These decisions on interpretation of documents expressly allow for a situation where the wrong words (or symbols) are used, and provide that those errors of expression can be corrected by a proper sensible construction of the document to produce a reasonable result over one that is not.

That being so, the use of the wrong euro currency symbol in the rent figure in the tenancy agreement can be interpreted by the Tribunal to read as the correct pound sterling currency symbol.

Decision

In these circumstances, the Tribunal will make an order for payment by the Respondent to the Applicants of the sum of £1,046.03.

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.

Neil Kinnear

Legal Member/Chair

03/09/19

Date