



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

Chamber Ref: FTS/HPC/CV/20/1698

Re: Property at 1/3 Bruntsfield Gardens, Bruntsfield, Edinburgh, EH10 4DX (“the Property”)

Parties:

Mr Fraser MacDonald, Chemin de L'Oursiere 9, BP 1355, 1264 St Cergue, Switzerland (“the Applicant”)

Mr Paul Hartmann, 1/3 Bruntsfield Gardens, Bruntsfield, Edinburgh, EH10 4DX (“the Respondent”)

Tribunal Member:

Karen Moore (Legal Member)
Elizabeth Currie (Ordinary Member)

Background

1. By application received between 12 August and 1 September 2020 (“the Application”), the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a payment order in terms of Section 16 of the Act in respect of rent arrears due and owing by the Respondent to the Applicant arising from a short assured tenancy agreement. The Application comprised an application form, copy short assured tenancy agreement (“the Tenancy Agreement”) in terms of the Housing (Scotland) Act 1988 (“the 1988 Act”) showing a monthly rent of £1,250.00, and copy bank statements.
2. On 8 September 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 16 October 2020 at 10.00 by telephone conference call. The Application was intimated to the Respondent. The CMD was intimated to both Parties.

3. Prior to the CMD, both the Applicant and the Respondent lodged written submissions with the Tribunal which were exchanged to each other. The Applicant lodged several amended rent statements, the last one showing the monthly rent to be £1,400.00 and the sum due to be £6,617.23, including interest at 8%. The Respondent's written submissions set out his position in respect of other parties who might have a responsibility for the sum due and which provided an overview of the tenancy.

Case Management Discussion - Summary of Discussion

4. The CMD took place on 16 October 2020 at 10.00 a.m. by telephone. The Applicant and the Respondent both took part. Neither was represented.
5. At the CMD, the Parties agreed that the Tenancy Agreement shows that "the Tenant" is "Charlotte Hocking, Paul Hartmann and Diana Meschke", the rent is £1,250.00 per calendar month and there is no documentation to evidence if the Tenancy Agreement has been varied or renewed. The Parties accepted that the rent had been increased in or around the beginning of 2019 to £1,400.00 per month but that this is not documented
6. The outcome off the CMD was that although both Parties agreed that the full rent had not been paid since April 2020, the Parties disputed who was liable for the full rent and disputed the date on which the tenancy terminated. Accordingly, a Hearing on evidence was fixed.
7. The Tribunal made the following Direction in terms of Rule 16 of the Rules that before the Hearing :

"The Applicant is to provide :-
 - i) *An updated rent statement in respect of the sum claimed and (ii) evidence of the Section 33 Notice served on his behalf and**The Respondent is to provide:*
 - i) *Evidence that Dr. Kat Morris was a joint tenant at the Property and that the Applicant recognised her as such;*
 - ii) *Evidence of the email notice sent by him to the Applicant terminating the tenancy and any reply received from the Applicant and*
 - iii) *Evidence of when he removed from the Property."*
8. The Applicant complied with the Direction and lodged an updated rent statement and correspondence from solicitors who acted on his behalf confirming that a Notice to Quit was served terminating the tenancy at 1 November 2020 and confirming that notice in terms of Section 33 of the 1988 Act ("the Section 33 Notice") had been served.
9. The Respondent complied with the Direction and lodged copy correspondence regarding Dr. Kat Morris's occupancy of the Property, copy agreement between Charlotte Hocking and Dr. Morris relevant to that occupancy ("the Hocking/Morris Agreement"), copy email from him terminating his tenancy, copy notice from SafeDeposit Scotland in respect of his deposit at the Property and copy notice from

SafeDeposit Scotland in respect of his deposit at another property.

10. The items lodged by the Parties in response to the Direction are discussed further in this Decision Notice.
11. In addition, both Parties submitted other documentation and correspondence to the Tribunal all of which was copied to each other. This documentation and correspondence related to the health and safety certificates for the Property and the signature on the recorded delivery certificate for the Notice to Quit and Section 33 Notice.

Hearing

12. A Hearing took place on 1 December 2020 at 10.00 a.m. by telephone. The Applicant and the Respondent both took part. Neither was represented.

Applicant's Position

13. The Applicant advised the Tribunal that his position is simply that the Respondent is due and owing rent of £7,928.43 to the end of November 2020 and that in terms of the Tenancy Agreement. The Applicant stated that as far as he is aware the Respondent remains bound by the Tenancy Agreement as he has not given proper notice to terminate. He accepted that the Respondent gave notice to terminate by email in September 2020 but this did not accord with the 60 days' notice and first class post required by the Tenancy Agreement.
14. In response to questions from the Tribunal, the Applicant accepted that the Tenancy Agreement was between himself as Landlord and Charlotte Hocking, Paul Hartmann and Diana Meschke as Tenant. He accepted that Diana Meschke vacated the Property some time ago and that persons unconnected to the Tenancy Agreement, including Dr. Kat Morris, had resided in the Property. His position is that Dr. Morris was a sub-tenant of Charlotte Hocking and had no contractual relationship with him as landlord.
15. In response to further questions from the Tribunal, the Applicant explained that he dealt mainly with Charlotte Hocking. In respect of rent, he stated that the Respondent paid one-third rent and that Charlotte Hocking paid two-thirds, for her and the other occupants including Dr Morris. The Applicant explained that the Respondent fell into rent arrears and so he insisted on an arrangement that Charlotte Hocking would collect the Respondent's rent and pay it direct to the Applicant. The Applicant explained that he knew that the shortfall in rent was the Respondent's share as he did not receive payment from the Respondent of that share.
16. In respect of changes to the occupants in the Property, the Applicant explained that this was dealt with by Charlotte Hocking and he considered her the "sole tenant". The Applicant accepted that the Tenancy Agreement had not been amended formally in any way to reflect this or to reflect any changes in occupancy.

17. With regard to the Hocking/Morris Agreement, the Applicant advised the Tribunal that he had not been aware of this document until it was lodged by the Respondent and that he had not been a party to it.
18. With regard to Diane Meschke vacating the Property, the Applicant understood that she had simply removed from the Property without giving notice shortly after the Tenancy Agreement came into effect and that Charlotte Hocking dealt with other occupants and that there were no formal variations of the Tenancy Agreement.
19. With regard to Charlotte Hocking vacating the Property, the Applicant accepted that, notwithstanding that he held the Respondent to 60 days' notice by first class post required by the Tenancy Agreement, he had allowed Charlotte Hocking to terminate her interest in the Tenancy Agreement on 28 days' notice by email. He also accepted that the Notice to Quit and Section 33 Notice were served only on the Respondent.
20. In response to questions from the Respondent, the Applicant agreed that he had attempted to terminate the tenancy in February 2020 and again in June 2020 but, on taking legal advice, accepted that he could not do this. The Applicant explained that he took this course of action as he did not recognise the Respondent as a tenant until he was given legal advice to the contrary, the advice being that the Tenancy Agreement remained in force and that the Applicant required to comply with the 1988 Act to bring it to an end.
21. Notwithstanding that he maintained that he had no contractual relationship with Dr. Morris, the Applicant accepted that he had corresponded with Dr. Morris in respect of her finding alternative accommodation and was aware that she remained in the Property after Charlotte Hocking had removed.
22. The Applicant did not accept the Respondent's position that the Applicant was party to a Tenancy Arrangement with Dr. Morris or any other persons but accepted that the Property had been occupied by other persons.
23. In response to questions from the Respondent, the Applicant agreed that his representative, Lynne Harmsworth, had keys to the Property and that, in or around March 2020, she had entered the Property with a person named Frances Butler who he had allowed to occupy the Property. The Applicant did not accept the Respondent's position that Mr Butler remained in the Property for around four weeks, but though it a few nights.

Respondent's Position

24. The Respondent stated that he had resided in the Property for around twelve years as he had resided there as a student when the Property was a licenced House in Multiple Occupation. He explained that Charlotte Hocking, Diana Meschke and he had entered into the Tenancy Agreement in 2011. He explained that in February 2020, the Applicant contacted him to terminate the Tenancy Agreement, giving him 54 days' notice to leave. He explained that at that time, Charlotte Hocking had vacated the Property and it was occupied by Dr. Morris and himself. The

Respondent stated that, in view of his length of tenancy, he considered the Applicant's approach in trying to terminate the tenancy and remove him from the Property to be harassing and intimidating.

25. The Respondent explained that he had been in a relationship with Charlotte Hocking which had broken down. Charlotte Hocking vacated the Property in March 2020 without telling him and this had prompted the Applicant to take steps to remove the Respondent. The Respondent stated that he had attempted to reach an agreement with the Applicant to remove from the Property but explained that the national lockdown prevented him from finding alternative accommodation. The Respondent stated that the Applicant had agreed that the Respondent and Dr. Morris could remain in the Property on a month-to-month basis.
26. The Respondent explained that at that time he paid his rent which he understood to be one-third of the monthly rent. Dr. Morris paid her share, again one-third of the monthly rent, to the Respondent and he paid both shares to the Applicant. The Respondent stated that it was not until matters escalated in July 2020 that he sought legal advice and was advised that he was a tenant in terms of the Tenancy Agreement and had a right to remain in the Property.
27. In response to questions from the Tribunal, the Respondent agreed that the rent statement lodged by the Applicant was accurate in respect of payments made by him since April 2020. He agreed that he paid £933.33 on 1 April being two-thirds of the rent and being his and Dr. Morris's share. He paid £1,167.90 on 1 May 2020 and £1,170.34 on 1 June 2020, again being two-thirds of the rent for him and Dr. Morris and the Council Tax requested by the Applicant. He explained that the Applicant advised him that the Applicant had notified the Council Tax office of Edinburgh City Council to change liability to the Applicant and that the Applicant had paid £500.00 towards Council Tax which sum was now due by the Respondent. The Respondent advised that on contacting the Council Tax office, he was told that the Council Tax had not been paid and so he believed that the Applicant had acted deceptively in this way. The Respondent advised the Tribunal that up until then, the tenants had paid the Council Tax direct to Edinburgh City Council and that he paid his share to Charlotte Hocking who paid the Council. He explained that the occupants of the property dealt with all utility bills in this way.
28. In response to further questions from the Tribunal, the Respondent explained that the Applicant dealt only with Charlotte Hocking and agreed with the Applicant that it was she who arranged occupancy changes in the Property throughout the tenancy. The Respondent advised the Tribunal that he was aggrieved at the way in which he had been treated by the Applicant and that he viewed this treatment as harassment which had affected his health.
29. With regard to Dr. Morris's status as tenant, the Respondent stated that he had thought she was a tenant and that it was only after Charlotte Hocking had left that he discovered the Hocking/Morris Agreement. Although not signed by the Applicant, the Respondent thought that this could be binding on the Applicant. He explained that although Charlotte Hocking vacated the Property in March some of

her belongings remained and that he and Dr. Morris fell out over how these should be returned to Charlotte Hocking.

30. The Respondent advised the Tribunal that it was his belief that the Applicant intended to have Charlotte Hocking return to the Property after the Respondent had left. He stated that there had been no inspections of the Property until Charlotte Hocking vacated and since there have been several inspections, often unannounced. The Respondent advised the Tribunal that after her departure, Charlotte Hocking sent emails to the other residents in the block updating them on the change of occupant and appeared to be doing so on behalf of the Applicant.
31. The Respondent advised the Tribunal that, in March 2020, another person, Mr Frances Butler, had been allowed to reside in the Property for a short time by the Applicant and his agent, Lynn Harmsworth.
32. The Respondent advised the Tribunal that he calculated that he might owe the Applicant around £530.00 rent, being the sum due by him from 1 July 2020 to mid-October 2020 under deduction of the tenancy deposit of £375.00.
33. In response to questions from the Applicant and with reference to a telephone call which the Respondent had recorded, the Respondent agreed that he had not obtained the Applicant's consent to make the recording. The Respondent accepted that he had received the Notice to Quit and Section 33 Notice as issued by the Applicant's agents. With regard to the date on which he vacated the Property, the Respondent stated that it was at the beginning of October when he removed his possessions and that he returned the keys by posting them through the letter box.
34. In response to further questions from the Applicant and with reference to the amounts of rent paid in May and June 2020, the Respondent explained that he had paid more than two-thirds of the monthly rent as he had also paid the Council Tax as requested by the Applicant.
35. Following on from the Applicant's questions to the Respondent, the Tribunal asked the Applicant to explain the position with the Respondent's tenancy deposit. The Applicant explained that the Respondent had paid £375.00 being a quarter of the deposit of £1,500.00 as specified in the Tenancy Agreement as at the time the tenancy deposit was paid there were four occupants in the Property who each paid £375.00. The Applicant explained that he was not aware that, in terms of the tenancy deposit scheme regulations, the deposit must be lodged with an approved scheme and that he lodged the deposit when he became aware of this on 22 July 2020. The Applicant advised the Tribunal that he had repaid the remainder of the deposit being £1,200.00 to Charlotte Hocking regardless of the arrears and the fact that the Property had not been inspected for damage. The Respondent's share remains lodged with SafeDeposits Scotland.

Findings in Fact

36. The Tribunal accepted that both Parties gave evidence at the Hearing truthfully and any differences in their evidence were differences in recollection or viewpoint and not deception or attempts to deceive.
37. From the Application and the Hearing, the Tribunal held the following findings in fact either proved or evidenced by the Parties :-
- i) The Applicant is the owner and landlord of the Property.
 - ii) The Respondent has resided at the Property as a tenant for more than 12 years and, in any event, from the entry date of 1 November 2011 as shown in the Tenancy Agreement;
 - iii) The Tenancy Agreement was entered into by the Applicant as Landlord on the one part and the Respondent and Charlotte Hocking and Diane Meshke as Tenant on the other part;
 - iv) The Tenancy Agreement is a short assured tenancy in terms of the 1988 Act for an initial period of six months from 1 November 2011;
 - v) The rent at that time was £1,250.00 per calendar month;
 - vi) Previous to commencement of the Tenancy Agreement, the Respondent had paid a tenancy deposit of £375.00, being one-quarter of the deposit required in terms of the Tenancy Agreement which tenancy deposit was not lodged with an approved tenancy deposit scheme provider by the Applicant until July 2020;
 - vii) The rent increased at some point to £1,400.00 per calendar month;
 - viii) Notwithstanding that the Tenancy Agreement defines the Tenant as a consortium or joint enterprise of the three named individuals and places obligations on the three named individuals as a single entity, the Applicant has accepted rent and the tenancy deposit from the three named individuals as separate parties and, in particular, the Applicant has accepted a one-third share of the rent from the Respondent;
 - ix) Diane Meshke vacated the Property around the middle of 2012;
 - x) Diane Meshke did not give notice to leave in terms of the Tenancy Agreement;
 - xi) Diane Meshke did not renounce or assign her interest in the Tenancy Agreement in favour of the Respondent and Charlotte Hocking;
 - xii) The Tenancy Agreement was not varied or renewed at any time to reflect the change in occupancy caused by Diane Meshke leaving the Property;
 - xiii) Other people occupied the Property after that date;
 - xiv) The Tenancy Agreement was not varied or renewed at any time to reflect these changes in occupancy of the Property;
 - xv) Dr. Morris resided in the Property from around October 2015;
 - xvi) The Tenancy Agreement was not varied or renewed at any time to reflect change in occupancy caused by Dr Morris residing in the Property
 - xvii) Dr. Morris and Charlotte Hocking entered into the Hocking/Morris Agreement;
 - xviii) Neither the Applicant nor the Respondent were party to the Hocking/Morris Agreement and were not aware of its existence until after Charlotte Hocking vacated the Property;
 - xix) The Respondent paid one-third of the rent direct to the Applicant until he fell into rent arrears;

- xx) At the Applicant's request, Charlotte Hocking took responsibility for payment of the full rent at this time and the Respondent paid his share to Charlotte Hocking to pay to the Applicant;
- xxi) Charlotte Hocking collected Dr Morris's share of the rent and paid this to the Applicant;
- xxii) The Applicant considered Charlotte Hocking to be the sole tenant;
- xxiii) Charlotte Hocking vacated the Property in or around March 2020;
- xxiv) Charlotte Hocking gave 28 days' notice to the Applicant that she intended to leave the Property and the Applicant accepted this notwithstanding the terms of the Tenancy Agreement and without reference to the Respondent;
- xxv) Charlotte Hocking did not renounce or assign her interests in the Tenancy Agreement in favour of the Respondent;
- xxvi) The Tenancy Agreement was not varied or renewed at any time to reflect Charlotte Hocking vacating the Property;
- xxvii) The landlord/tenant relationship between the Parties was amicable until Charlotte Hocking vacated the Property when the relationship deteriorated;
- xxviii) The Applicant asked the Respondent to remove from the Property in March 2020 but did not serve formal notice to this effect;
- xxix) The Applicant allowed Mr. Butler to occupy the Property in March 2020 without reference to the Respondent;
- xxx) By email on 20 September 2020, the Respondent gave 28 days' notice to the Applicant that he intended to leave the Property;
- xxxi) The Applicant rejected this notice as it did not conform to the terms of the Tenancy Agreement which requires 60 days' notice;
- xxxii) Around this time, both Parties sought and obtained legal advice that the Tenancy Agreement remained in force;
- xxxiii) The Applicant's solicitors on his behalf served Notice to Quit with an effective date of 1 November 2020 and the Section 33 Notice on the Respondent by Sheriff Officer on 2 July 2020;
- xxxiv) The Respondent continued to pay a one-third share of the rent until 1 June 2020;
- xxxv) The Respondent vacated the Property at the beginning of October 2020.

Issue for the Tribunal

38. The issue for the Tribunal is whether or not the Respondent is due and owing to the Applicant for the full sum of £7,928.43 as claimed by him as rent due in terms of the Tenancy Agreement for the period from April 2020 to November 2020.

The Status of the Tenancy Agreement

39. The Tribunal accepts that the Tenancy Agreement is a short assured tenancy in terms of the 1988 Act. The language used in the Tenancy Agreement, whilst at times not usual for a tenancy agreement in Scots Law, is clear that the Landlord is one person, namely the Applicant, and that the Tenant is a group of three persons, namely the Respondent, Charlotte Hocking and Diane Meshke. The wording throughout the Tenancy Agreement refers to "the Tenant" and does not distinguish

between them in any way. However, in terms of Clause 5(h) of the Tenancy Agreement, the Parties agree that, if the Tenant is more than one individual, the “covenants” of the tenancy are made “jointly and severally”. The Tribunal understands that the term “covenants” means “obligations”. Therefore, if the Tenancy Agreement is current and valid, the Respondent will have a responsibility for the sum claimed as due and owing by the Applicant. Accordingly, the key factor in determining this issue is the status of the Tenancy Agreement throughout the Respondent’s occupancy of the Property and, in particular, during the period from April 2020 to November 2020.

40. The term of the Tenancy Agreement is six months commencing on 1 November 2011. The rent is stated as being £1,250.00 per calendar month for the terms of the tenancy “thereafter reviewed every 6 months”. Therefore, there is an implication that the Tenancy Agreement may continue by tacit relocation, the doctrine by which a lease can continue on the same terms unless one of the parties indicates that they wish the lease to end. The doctrine of tacit relocation renews the original lease on the same terms until the parties bring it to an end.
41. The Tribunal considered if tacit relocation applied to the Tenancy Agreement. The Tribunal had regard to the actions of the Parties and the events which have occurred since 1 November 2011. The Parties accept and the Tribunal finds in fact that Diane Meshke vacated the Property in or around the middle of 2012 and that Tenancy Agreement was not amended in anyway. In effect, Diane Meshke abandoned her interest in the Property. The Parties accept and the Tribunal finds in fact that other people, including Dr. Morris, resided in the Property thereafter, again without amendment to the Tenancy Agreement. The Parties accept and the Tribunal finds in fact that Charlotte Hocking vacated the Property in or around March 2020 with the approval of the Applicant and that Tenancy Agreement was not amended in anyway.
42. The Tribunal considered the effect of the change of individuals on the Tenancy Agreement and considered whether or not the Tenant, being the group of three named individuals, could be severed by operation of Clause 5(h) of the Tenancy Agreement or by any other terms of the Tenancy Agreement. The Tribunal had regard to the concept of joint or common tenants and accepted that the obligations of the Tenancy Agreement fell on each as individuals. The Tribunal noted that the Tenancy Agreement gave no rights of assignation or renunciation. The Tribunal noted that the Tenancy Agreement at Clause 3 (s), (t) and (u) prohibited assignation, subletting, sharing possession and taking in lodgers and took the view that the Tenancy Agreement expressly prohibited the Tenant from altering its complement. Clause 5(h) of the Tenancy Agreement places obligations and not rights on the Tenant. Accordingly, the Tribunal determined that this Clause 5(h) of the Tenancy Agreement has no bearing on or relevance to the definition of the Tenant.
43. The Tribunal found nothing in the Tenancy Agreement to support the premise that the complement of the Tenant could be altered by agreement or unilaterally.

44. The Tribunal had regard to the actions of the Parties to support the doctrine of tacit relocation. The Applicant stated and the Tribunal finds in fact that he considered Charlotte Hocking to be a sole tenant. The Parties accept and the Tribunal finds in fact that, notwithstanding the terms of the Tenancy Agreement at Clause 3(a) which states that the rent is to be paid “by Bankers Standing Order drawn on the Tenants’ account only”, the Respondent paid a one-third share of rent to the Applicant, at first direct and latterly via Charlotte Hocking. The Applicant accepts and the Tribunal finds in fact that the Applicant was aware that Dr. Morris was residing in the Property as a sub-tenant of Charlotte Hocking, contrary to the terms of the Tenancy Agreement. The Applicant accepts and the Tribunal finds in fact that the Applicant treated both Diane Meshke and Charlotte Hocking differently in respect of giving notice to vacate the Property, contrary to the terms of the Tenancy Agreement. Accordingly, the consistent actions of the Parties do not support the continuation of the Tenancy Agreement in its original term and so do not evidence the Tenancy Agreement continuing by tacit relocation.
45. Therefore, the Tribunal determined that Tenancy Agreement, by virtue of the action of the parties to it, had not remained in its original form and so the doctrine of tacit relocation cannot apply. The precise date on which Diane Meshke abandoned her interest in the Property is not known. If Diane Meshke vacated the Property before 1 May 2012, the Tenancy Agreement ended on that date. If she vacated the Property after 1 May 2012, the Tenancy Agreement ended at 1 November 2012. In any event, the Tribunal’s view is that the Tenancy Agreement ended no later than 1 November 2012.
46. The Tribunal notes and accepts that both Parties obtained legal advice that the Tenancy agreement remains in force. The Tribunal is not bound by that advice. The Tribunal does not know on what basis and on what facts that advice was given. The Tribunal does not know if the solicitors giving that advice had the full background information available to the Tribunal or if the solicitors giving that advice would maintain the advice on having the full background information.

Nature of the Respondent’s Occupation of the Property

47. Having found that tacit relocation does not apply and that the Tenancy Agreement ended no later than 1 November 2012, the Tribunal then considered the basis of the contractual relationship between the Parties in respect of the lease of the Property.
48. The Tribunal found that, by virtue of the actions of the Parties and Charlotte Hocking with regard to occupying the Property and the tender and acceptance of rent, there was a residential lease between the Parties and Charlotte Hocking, albeit an unwritten lease. There being no written agreement to prescribe periods of notice, the Tribunal was of the opinion that the Respondent’s email dated 20 September 2020 giving 28 days’ notice was sufficient to terminate his interest in the lease at common law as at 31 October 2020, being the monthly term of the lease. In any event, the Tribunal noted that the Applicant had accepted a similar

notice by Charlotte Hocking in March 2020 and so considered him to personally barred from treating the Respondent in a different vein.

Sum sought by the Applicant.

49. The Tribunal had regard to the sum of £7,928.43 sought by the Applicant and noted that he sought rent at the rate of £1,400.00 per calendar month from 1 April 2020 to 30 November 2020 being £11,200.00 less payments made by the Respondent of £3,271.57. The Applicant also sought interest at the rate of 8% and, if the Tribunal considered that the Tenancy Agreement remained in force, rent for the period of 1- 31 December 2020.
50. From the Tribunal's Findings in Fact as set out at Paragraph 3 (vi), (viii), (xix) and (xxxiv), the Respondent tendered and the Applicant accepted a one-third share of both the tenancy deposit and monthly rent. There being no written agreement to the contrary, the Tribunal determined that the Parties established a liability of the Respondent for a one-third share of the £1,400.00 monthly rent being £466.67.
51. Having established that the effect of the Respondent's email dated 20 September 2020 terminated his interest in the lease at 31 October 2020, the Tribunal determined that the Respondent's liability to the Applicant from 1 April 2020 to 31 October 2020 is £2,800.02 of which he has paid £1,871.58 leaving a balance of £982.42. The Tribunal notes that the Respondent's tenancy deposit of £375.00 remains lodged.
52. With regard to Mr. Butler, there was no evidence that he had paid any rent which could be deducted from the Respondent's liability.

Decision of Tribunal and Reasons for the Decision

53. Having determined that the Respondent is due and liable for rent to 31 October 2020 and having calculated that sum to be £982.42, the Tribunal grants an Order for this sum.
54. With regard to the Applicant's request that interest be applied, given the whole circumstances of the matter, the Tribunal is not of a mind to award interest.

Other Matters

55. Other matters such as the status of Dr. Morris as a tenant or sub-tenant and the actions of the Applicant and his representative were canvassed before the Tribunal but, as these had no direct bearing on the issue of liability for rent due by the Respondent, did not form part of the Tribunal's decision making.
56. The Tribunal was disappointed to note, however, that the Applicant had failed to comply with the Tenancy Deposit Schemes (Scotland) Regulations 2011 requiring him to lodge the tenancy deposit with an approved scheme within thirty working days of the date of its receipt by him and that he returned the balance of the deposit held by him to Charlotte Hocking without consideration of the Respondent and without considering if this sum should have been retained and applied to rent which continued to fall due. As this had no direct bearing on the issue of liability for rent due by the Respondent, this did not form part of the Tribunal's decision making

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.

Karen Moore

Legal Member/Chair

22 December 2020
Date