



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 32 of the Housing (Scotland)
Act 1988**

Chamber Ref: FTS/HPC/CV/18/2348

**Re: Property at 3/6, 72 Lancefield Quay, Riverheights, Glasgow, G3 8JF (“the
Property”)**

Parties:

**Mr Mandeep Hoonjan, c/o Martin and Co Glasgow, 172 Woodlands Road,
Glasgow, G3 6LL (“the Applicant”)**

Mr Anthony Karuku, 23 Hyndal Avenue, Glasgow, G53 5LH (“the Respondent”)

Tribunal Members:

Susan Christie (Legal Member)

Decision (in absence of the Respondent)

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

Background

1. The Application is made in Form F and seeks an Order for Payment. It was submitted on 4 September 2018. The original sum sought being £23561.51.
2. The paper apart accompanying the Application states that the Respondent rented the Property from the Claimant between 9 October 2017 and 23 August 2018 at a rental of £875 per calendar month. The Claimant states that the Respondent failed to pay rent for at least two months of his tenancy and made part payment for two more months leaving the outstanding balance due and owing.
3. A detailed Statement of Account and additional information was submitted thereafter.
4. On 5 November 2018 a legal member with delegated powers of the Chamber President issued a Notice of Acceptance of the Application under Rule 9 of

the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017, as amended ('the Rules').

5. A Case Management Discussion (CMD) was arranged for 17 December 2018 at 11.30 in Glasgow Tribunals Centre, Room 109, 20 York Street, Glasgow G2 8GT.
6. Written Representations were due to be submitted by 10 December 2018.
7. Intimation was made on both parties with service on the Respondent by Sheriff Officers on 23 November 2018 at the Property.
8. No written Representations were received.

The First Case Management Discussion

9. At the CMD on 17 December 2018 only the Applicant's Representative Ms Thomson was in attendance.
10. A discussion took place. Ms Thomson advised that it had transpired that morning that the sum sued for was incorrect. Further payments towards the rent arrears had been received, reducing the rent arrears claimed in the application of £2,356.51 to the sum of £1,081.51. Ms Thomson lodged an updated Statement of Account from the Applicant's agents, Martin & Co dated 17 December 2018. She advised that the further payments received had been £400 on 3 October 2018 and return of the tenancy deposit of £975 on 12 October 2018. However, Ms Thomson also advised that the Applicant wished to amend the application to seek an additional £450 from the Respondent in respect of damage to the Property discovered after he vacated around 23 August 2018.
11. It was noted by the Tribunal that, although the Applicant was stating that the Respondent had vacated the Property around 23 August 2018, the Tribunal had not been notified of any forwarding address for the Respondent in the application, nor subsequently, and accordingly service of the application and notification of the CMD had been made to the Respondent by Sheriff Officer at the Property address on 23 November 2018, by which time, it transpires, he was no longer there. The Tribunal therefore advised that the case would require to be continued to a further CMD, with details of that and the Application served on the Respondent in advance of that to provide the Respondent with fair notice of the claim against him and to allow him the opportunity to respond to the claim.
12. The Tribunal did not consider it appropriate to allow the application to be amended in the terms sought by Ms Thomson. Although the overall sum sought is reduced, the introduction of a claim for the costs of repair, etc changed the basis of part of the claim and would require vouching of these costs to be produced. Following further discussion, it was agreed that this application for unpaid rent would continue in the reduced sum sought of £1,081.51 and the Applicant would consider submitting a separate application to the Tribunal in respect of the repair costs.
13. Ms Thomson advised that she would verify the forwarding address for the Respondent (as per the updated Statement of Account lodged and referred to above) and submit written confirmation of this to the Tribunal later today, together with written confirmation of the amendment to the amount of the rent arrears sought in respect of this application, in order that notification could be made to the Respondent in advance of the further CMD.

14. A Note on a CMD was issued to the Parties on 19 December 2019.
15. A new address was provided for the Respondent on 8 January 2019 and written confirmation of the reduced sum sought was made to the Tribunal.
16. Intimation of the new date for a CMD assigned for 28 January 2019 at 10am within Glasgow Tribunals Centre was to be made on the Parties. However, it transpired that the forwarding address given for the Respondent did not exist and Sheriff Officers were unable to intimate the papers needed to be served on the Respondent. The CMD was therefore cancelled.
17. A corrected address was found and provided to the Tribunal a new CMD was assigned for 13 March 2019 at 11.30 in Glasgow Tribunals Centre, Room 110, 20 York Street, Glasgow G2 8GT.
18. Written Representations were to be submitted by the Respondent by 7 March 2019.
19. Intimation was made on both Parties, with service on the Respondent by Sheriff Officers on 23 November 2018 by way of personal service at 23 Hyndal Avenue, Glasgow G53 5LH, the new address.
20. No written Representations were received.

The Second Case Management Discussion

21. The Case Management Discussion ("CMD") took place on 13 March 2019 at 11.30am at Glasgow Tribunals Centre. The Applicant's Representative, Ms Mandy Robertson, of iresolve, Legal was in attendance.
22. The Respondent was not in attendance. I was satisfied proper intimation of the CMD had been made on the Respondent by Sheriff Officer personal service and proceeded in his absence.
23. The Parties entered into a Short Assured Tenancy on 8th October 2017 over the Property for an initial term from 9 October 2017 to 8th August 2018 and monthly thereafter. The rent being £875 pcm payable in advance.
24. A security deposit was made of £975 under the Tenancy Deposit Scheme Regulations (Clause 6 of the Agreement). This could be claimed against at the end of the tenancy for unpaid rent, amongst other things, as stated in the tenancy agreement.
25. The end date of the tenancy declared as being 23 August 2018.
26. Rent was debited in the rent Statement of Account for ten months at £8750 plus an apportionment for the last days rent due up to 23 August 2018 of £431.51, totalling £9181.51. From that there were rent payments by the Respondent totalling £7600. The balance between those is £1581.51.
27. I indicated that the 'Tenant substitution fee' is not allowed as it was not asked for specifically in the Application.
28. I enquired as to the recovery of the Rent Deposit and whether this was claimed for unpaid rent or for another heading of claim. This was important because it could have reduced the debt for unpaid rent by £975. The Applicant's Representative took instruction from her principal and I was advised that the Deposit was recovered for repairs and other headings as well as rent. The sums debited to the Rent Account under the headings *other than*

rent totalled £750. This meant that potentially the remainder of the Deposit of £225 could be credited towards unpaid rent. This brought out a balance potentially due for unpaid rent as £1356.51.

29. The amended sum sought by the Claimant and intimated on the Respondent was lower than this figure. It is £1,081.51.

Findings in Fact

- I. The Parties entered into a Short Assured Tenancy Agreement (SAT) for an initial term from 9 October 2017 to 8th August 2018 and on a month to month basis thereafter.
- II. The tenancy ended on 23 August 2018.
- III. The rental due under the SAT was £875 per calendar month
- IV. A Deposit was taken of £975 and recovered towards repairs and unpaid rent due.
- V. The outstanding rent due and owing by the Respondent to the Applicant, after deduction of all payments is restricted to the sum claimed of £1,081.51.

Finding in Fact & Law

- VII. The sum of £1,081.51 is due and resting owing by the Respondent to the Applicant.

Reasons for Decision & Decision

The contractual terms of the SAT entitle the Applicant to recover from the Respondent unpaid rent due. I was satisfied that the paperwork produced and the oral information given evidenced the unpaid rent due and owing can be fixed at the restricted amount sought of £1,081.51, based on the calculations above.

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.

Ms Susan Christie

Legal Member/Chair

13 March 2019
Date