



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/19/1444

Re: Property at 130 Hamilton Place, Aberdeen, AB15 5BB (“the Property”)

Parties:

Mr Edward Adderley, 106 Clifton Road, Aberdeen, AB24 4RD (“the Applicant”)

Mr Peter Mearns, 6A St Swithin Street, Aberdeen, AB10 6XE (“the Respondent”)

Tribunal Members:

Fiona Watson (Legal Member) and Mike Scott (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order is granted against the Respondent for payment of the undernoted sum to the Applicant:

**Sum of SEVEN THOUSAND SIX HUNDRED AND FIFTY POUNDS (£7,650)
STERLING**

- Background
- 1. An application dated 7 May 2019 was submitted to the Tribunal under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a payment order against the Respondent in relation to repayment of rent paid under an assured tenancy agreement.

2. A Case Management Discussion took place on 9 October 2019. Both parties were personally present. The Applicant sought repayment of rent paid between May 2016 and March 2019 in the sum of £7,650 due to the Respondent's failure to allow him occupancy of a room let to the Applicant during that period. The Respondent denied that repayment of rent was due, stating that the payments were taken in lieu of storage costs incurred in storing the Applicant's goods, whilst he occupied alternative accommodation provided by the Respondent during that period. A Hearing was accordingly fixed for evidence to be heard on the matter.
3. A Hearing took place on 9 January 2020. The Applicant was personally present and supported by his wife. There was no appearance by or on behalf of the Respondent. The Tribunal was satisfied that the Respondent had had sufficient notice of the Hearing date and accordingly that the Hearing should run in his absence.
4. Following submission being made by the Applicant, The Tribunal found that the Applicant was entitled to the Order for Payment as sought. An Order was granted in the sum of £7,650 against the Respondent.
5. By way of email of 27 February 2020, the Respondent contacted the Tribunal to advise that he had been unaware of the date of the Hearing and had only become aware that the Order for Payment had been granted following Sheriff Officers arriving at his property. Upon further investigation by the Tribunal administration it became apparent that the Respondent had advised the Tribunal on 5 September 2019 that he had changed his email address and that future correspondence should be directed there. However, due to an administrative error, the Respondent's updated email address was not entered into the Tribunal computer system and the notification of the Hearing date was issued to the Respondent at his previous email address.
6. The Tribunal considered the Respondent's email in terms of Rule 30 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. The Tribunal considered that due to the administrative error on the part of the Tribunal which resulted in the Respondent not being notified of the date of the Hearing to his requested email address, it was in the interests of justice that the Decision of the Tribunal issued on 9 January 2020 be recalled in terms of Rule 30(2) and the matter brought back to a Case Management Discussion to determine further procedure. The Tribunal accordingly recalled the Decision of 9 January 2020 and fixed a Case Management Discussion of new to determine further procedure.
7. A further Case Management Discussion took place on 31 August 2020 by tele-conference. Both parties were personally present. The Respondent indicated that he wished to defend the application on the basis that the sum sought was not due, as the Respondent accepted payment from the Applicant as payment for keeping a room for him. He had also incurred staff costs in cleaning the room. The Respondent wished an opportunity to obtain legal advice in relation to his position.

8. The Applicant submitted that he considered that the sum sought was due as the room was never kept for him. He had initially been prevented from residing there due to bail conditions which were in place at the time. However, once those bail conditions were dropped he contacted the Respondent with a view to returning to the room, who advised that the room was no longer available as it had been let out to someone else. The Applicant wished to continue with his application.
9. The Case Management Discussion was adjourned and a further Hearing fixed.
10. A Hearing took place on 22 October 2020 by tele-conference. Both parties were personally present. The Applicant moved for the order for payment to be granted as sought. The Applicant re-iterated the position made at the earlier Hearing. He submitted that the parties had entered into an assured tenancy agreement for the let of a room at 130 Hamilton Place, Aberdeen, which let commenced in October 2007. In 2016 an altercation took place between the Applicant and another tenant in said property which resulted in criminal proceedings against the Applicant. Bail conditions were imposed on the Applicant which prevented him from returning to the room at 130 Hamilton Place between March 2016 and May 2016. The Respondent provided the Applicant with alternative accommodation during that time in a room at a property at Clifton Road, Aberdeen. The Applicant agreed with the Respondent that this would be a temporary arrangement. The alternative accommodation provided was smaller, and unsuitable for the Applicant. The Applicant paid rent of £310 per month for the room at the property at Clifton Road. He continued to make payment of the monthly rent of £255 for the room at Hamilton Place. Following the removal of the bail conditions in May 2016, the Applicant requested that he be allowed to reoccupy the let room at Hamilton Place. This was refused by the Respondent who advised that he had re-let the room at Hamilton Place to another tenant. Upon taking advice from Shelter, the Applicant continued to make payment of the rent for the room at Hamilton Place as he wished to keep his tenancy alive and return to said room. Between May 2016 and March 2019 the Respondent refused to allow the Applicant to return to the let room at Hamilton Place, whilst continuing to accept rent payments for same. The Applicant requested he be permitted to return on a number of occasions during that period, which were refused. An alternative room in the same property at Hamilton Place became available in March 2019, at which point the Applicant agreed to move into same.
11. The Applicant submitted that payment of rent in the sum of £255 per month was paid for the room from October 2007 onwards. Rent in the sum of £310 per month was paid by the Applicant to the Respondent from March 2016 onwards for Clifton Road. No formal steps were taken by the Respondent to lawfully terminate the lease of the room at Hamilton Place. The Applicant had paid the sum of £7,650 for the period May 2016 to March 2019 for the let at Hamilton Place during which time he had been deprived of occupancy.
12. The Respondent submitted that on the day he was told by the Applicant that he had bail conditions imposed which meant he could not return to Hamilton Place, he had made a "major concession" by offering the Applicant alternative

accommodation at Clifton Road. The room was a satisfactory size. There had been no discussion about the Applicant paying double rent. When the Respondent initially received the additional rent from the Applicant, he made an assumption that this was in payment of "a" room at Hamilton Place for the Applicant to return to in the future. The Respondent did not consider that there had ever been any agreement between the parties for a lease of a particular room. All that the Applicant was entitled to was "a" room in the property, and that was what he was paying for. When the Applicant had vacated the property following his bail conditions being imposed, the Respondent submitted that he had been forced to clear the room which was full of rubbish, food waste and vermin. He packaged up the Applicant's belongings and stored them in an alternative room within the house, and re-let the original room to another tenant. The Respondent confirmed that there was no written lease in place between the parties. The Respondent confirmed that he is not in the habit of entering into written leases with tenants in practice, and will only provide same if specifically requested. He regularly agrees with tenants to move between rooms in the house as and when they request same. The Respondent advised that the tenants in the property did not wish the Applicant to return to the room at Hamilton Place as they did not get along and he wished to respect that to maintain harmony in the property. He confirmed that at no point did he take any formal steps to formally terminate the lease in place between the parties. The property at Hamilton Place contains 10 rooms let on an individual basis. There is also a self-contained flat which adjoins the property which includes an additional two rooms.

13. It should be noted that the issue of the condition of the room at Hamilton Place was denied by the Applicant. There was clear disagreement between the parties as to the sizes of the rooms occupied by the Applicant. Reference was also made to an alleged assault by the Applicant against another tenant (on two occasions) both of which were denied by the Applicant. The Tribunal did not consider that any of these submissions were of any real relevance to the issue being adjudicated on.

14. In written submissions the Respondent stated that the payments made by the Applicant were accepted as payment of storage costs for the Applicant's items during the period May 2016 to March 2019, and not accepted as rent. This was denied by the Applicant. No storage costs had been incurred by the Respondent. It was noted by the Tribunal that no documentation was lodged by the Respondent to evidence any such storage costs having been incurred, nor any explanation given as to why the storage costs alleged by the Respondent amounted to exactly the same figure as the rental payments agreed.

- Findings in Fact

15. The Tribunal made the following findings in fact:

(a) The parties entered into an assured tenancy agreement ("the Agreement") for the let of the room at 130 Hamilton Place, Aberdeen which commenced October 2007;

- (b) The agreed rent between the parties under the Agreement was £255 per month;
- (c) The Respondent was unable to occupy the Property between March 2016 and May 2016 due to bail conditions imposed on him;
- (d) No steps were taken by the Respondent to formally terminate the Agreement;
- (e) The Applicant made payment of rent under the terms of the Agreement between March 2016 and March 2019;
- (f) The Respondent deprived the Applicant of occupancy of the Property in terms of the Agreement between May 2016 and March 2019;

- Reasons for Decision

16. The Tribunal was satisfied that the Applicant was entitled to the sum as sought. The Tribunal considered that the Respondent appeared to take a very casual approach to the leasing of the individual rooms within the property at Hamilton Place. He submitted that written leases were not entered into as standard practice and therefore this meant he was not bound to let a particular room to the Applicant, only "a" room in the property. The Tribunal did not agree with this approach.

17. Regardless of whether there was a written tenancy agreement in place, there was still a statutory assured tenancy agreement in place by virtue of the fact that rent was being paid and accepted, and the essential elements of a lease had been met, namely rent (being £255 per month), parties (the landlord and tenant being the parties to this application), subjects (the specific room being occupied) and duration (being open-ended). The Applicant entered into a tenancy agreement with the Respondent on this basis, albeit a statutory one. There was never any agreement between the parties to amend the "subjects" under this tenancy agreement, those subjects being the room occupied by the Applicant. This lease was never formally terminated.

18. There was no evidence lodged or referred to by the Respondent as regards the condition of the room and the necessity of the room being cleared by the Respondent during the existence of the Applicant's bail conditions. The Respondent's position being that it was necessary due to poor condition, something which the Applicant denied. The Respondent could not explain why, when he cleared the room, he did not thereafter put the Applicant's belongings back in that same room for the benefit of the Applicant and in continuation of the tenancy agreement between the parties. Instead, he decided to move the belongings into another room and re-let the room which formed the subjects of the lease between the parties, to someone else. On that basis, the Respondent was accepting rent from the Applicant for a room which was not available to the Applicant, and for which he was also receiving rent from another tenant.

19. The Applicant continued to make payment of rent under the terms of the statutory tenancy agreement between the parties but in return, was deprived of occupancy of the subjects by the Respondent. Whilst the Respondent submitted that the other tenants in the other rooms in the property had apparently indicated they did not wish the Applicant to return, the Respondent failed to take any legal steps to formally terminate the lease. Instead, he packed up the Applicant's belongings, moved them elsewhere, and continued to accept

rental payments from the Applicant for a room that was no longer available. The Applicant was entitled to occupy the room in terms of the ongoing tenancy agreement between the parties and was deprived of doing so by the Respondent. The Tribunal was not satisfied that any storage costs were validly incurred by the Respondent in relation to the Applicant's items and no evidence was lodged by the Respondent on this basis, nor verbal submissions made in relation to this at the Hearing. The Tribunal finds that the Respondent had been unjustifiably enriched as a result.

- Decision

20. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of SEVEN THOUSAND SIX HUNDRED AND FIFTY POUNDS (£7, 650)
STERLING

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.

Fiona Watson

Legal Member/Chair

22 October 2020
Date