



**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/19/3848**

**Re: Property at 33 (1F1) Sciennes Road, Edinburgh, EH9 1NT (“the Property”)**

**Parties:**

**Mr Donald Winford, CO Thomas Magnay and Co LLP, 8 St Mary's Green, Newcastle Upon Tyne, NE16 4DN (“the Applicant”)**

**Mr Marcel Rozek, Mr Mario Ruiz-Capillas, 33 (1F1) Sciennes Road, Edinburgh, EH9 1NT; 33 (1F1) Sciennes Road, Edinburgh, EH9 1NT (“the Respondents”)**

**Tribunal Members:**

**Graham Harding (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Applicant was entitled to an order for payment by the Respondents in the sum of £17435.00**

**Background**

1. By application dated 3 December 2019 the Applicant’s representatives, Lindsays, Solicitors, Edinburgh applied to the Tribunal for an order for payment by the Respondents in respect of alleged rent arrears due in respect of the property together with interest at the judicial rate of 8% per annum. The Applicant’s representatives submitted a copy grant of probate, copy bank statements and a Council Tax statement in support of the application.
2. By Notice of Acceptance dated 20 December 2019 a legal member of the Tribunal with delegated powers accepted the application and a Case Management Discussion was assigned.
3. A Case Management discussion was held on 21 February 2020 and was adjourned to 26 March 2020 for the Respondents to provide a copy of the

tenancy agreement within seven days and to lodge written representations concerning all matters relating to outstanding repairs within the property by no later than 12 March 2020. The sum claimed was amended to £14310.00.

4. The Case Management discussion assigned for 26 March 2020 was adjourned due to the Covid-19 outbreak and a further Case Management discussion assigned to take place by teleconference on 13 July 2020.
5. The Respondents submitted written submissions outwith the time period specified. The submissions did not address the issues relating to the alleged repairs outstanding at the property nor any repairs alleged to have been carried out by the Respondents at the property.
6. The Applicant's representatives submitted written representations dated 18 March 2020 addressing the Respondents submissions and seeking to amend the sum claimed to £15105.00 or any other sum which remains due.
7. The Applicant's representatives submitted further written representations dated 29 June 2020 seeking to amend the sum claimed to £18285.00 or any other sum which remains due.

#### **The Case Management Discussion**

8. A Case Management Discussion was held by teleconference on 13 July 2020. The Applicant was represented by Mr Gardiner and both Respondents were in attendance. Mr Rozek advised the Tribunal that he was currently staying in Poland having completed his degree and not having a job in Scotland due to the pandemic but that it was his intention to return and that he considered Scotland as his home. Mr Ruiz-Capillas advised the Tribunal that he was still residing at the property although temporarily staying in Spain as a result of the pandemic.
9. Mr Gardiner asked the Tribunal to amend the sum claimed to £18285.000. The Respondents accepted that no further rent had been paid and that no rent had been paid since July 2018 although attempts had been made to pay rent into the deceased landlord Mr Donald White's bank account over several months following his death. As neither Respondent had been staying in the property in recent months they would not have received correspondence sent to them there. Mr Ruiz-Capillas whilst suggesting that he disputed that the full amount claimed was due because of the condition of the property did not take issue with the amount of rent said to be outstanding. The Tribunal therefore allowed the sum claimed to be amended to £18285.00.
10. The Respondents explained that they had been unable to provide documentary evidence to support their claim that they had paid for repairs to the property themselves. They said that they had frequently asked the deceased Mr White to attend to problems with the property and he had said he would but never did. Mr Ruis-Capillas said that the Respondents had purchased a replacement washing machine on Gumtree at a cost of £250.00 and had the gas boiler

repaired at a cost of £600.00 but could not provide vouching for this expenditure. He said that following Mr White's death and on being unable to pay rent he had approached Edinburgh City Council to try to obtain the new landlord's details. He had been advised that no new landlord had been registered and that Mr White had not been registered as a landlord either. He had been told that this could have resulted in a Rent Penalty Notice being served. The Respondents did not produce any documentary evidence to show that any such notice had been issued by Edinburgh City Council. He said he had been told that if the executors wanted to sell the property, they might not ask for the rent to be paid. The Respondents confirmed that to begin with they had retained the rent in order to pay it but eventually it had been used for other purposes. They now did not have the funds to pay the amount said to be due.

11. Mr Ruis-Capillas went on to say that he had been in communication with the Applicant's representative in an effort to negotiate an extra-judicial settlement that would involve the Respondents giving up the tenancy of the property in exchange for reaching an agreement on the rent being claimed. The Tribunal explained that it could not be involved in any extra-judicial negotiations and could only consider the application before it.
12. Mr Gardiner explained that whilst there had been communication between his office and the Respondents his instructions were to ask the Tribunal to grant an order for payment in the amended sum of £18285.00. Mr Gardiner also pointed out that it appeared from the documents submitted by the Respondents that they had received advice from the University of Edinburgh Free Legal Advice Centre as to what steps they ought to take but had not followed them.
13. The Tribunal queried with Mr Gardiner his client's position with regards to the unvouched expenditure claimed by the Respondents in respect of the replacement washing machine and repair to the gas boiler given the respondents current circumstances. Having considered matters Mr Gardiner decided to adopt a pragmatic approach and said he would on behalf of his client accept a deduction of £850.00 from the amended sum claimed if an order was granted today.

### **Findings in Fact**

14. The deceased Donald James White entered into a tenancy agreement with Mario Ruiz-Capillas to rent the property at a rent of £795.00 per month from 1 January 2017 to 31 December 2017. There was a previous tenancy agreement between the deceased, Mr Ruis-Capillas and another tenant.
15. By his own admission Marcel Rozek was a joint tenant along with Mr Ruis-Capillas.
16. Rent was paid into Mr White's bank account with the Bank of Scotland until his death in July 2018.

17. From August 2018 until February 2019 the Respondents attempted to make payment of rent from Mr Ruis-Capillas' bank account to Mr White's bank account each month but on each occasion the payment was returned.
18. The Respondents did not retain the rent and were unable to pay the amount claimed.
19. The Respondents remain in occupation of the property although not staying there as a result of the Covid-19 pandemic.
20. The Applicant assumed title to the property as Executor by virtue of the deceased Mr White's Will and grant of Probate dated 19 February 2019 in the High Court of Justice and the District Probate Registry of Brighton.
21. The Respondents have paid no rent for the property since July 2018. The current rent outstanding amounts to £18285.00.
22. The Applicant's representative agreed to reduce the sum claimed by £850.00 to take account of the undocumented repairs and renewals claimed to have been undertaken by the Respondents.

### **Reasons for Decision**

23. The Respondents accepted there was a tenancy agreement and that the rent due by them amounted to £795.00 per calendar month. They also accepted that despite making efforts to pay rent during the period from August 2018 to February 2019 no rent was in fact paid and that no rent has been paid at all since July 2018. Although the Respondents disputed that the sum claimed was wholly due, they did not dispute that they were due to pay in terms of the tenancy agreement £795.00 per month and that therefore the rent due for the period from August 2018 to July 2020 was correctly calculated at £18285.00.
24. The Respondents sought to argue that because they had not been told who to pay the rent to over a period from August 2018 until late 2019 that should in some way be a material fact but there can be no basis in law for such an argument. The Respondents were aware that there was an obligation in terms of the tenancy agreement to pay rent and in law that obligation would on the death of the Landlord pass to his executor.
25. The Respondents also raised issues with regards to the condition of the property but were unable to produce any documentary evidence to show that they had complained to Mr White nor had they made any application to the Housing and Property Chamber under the repairing standards legislation. The Tribunal therefore could not be satisfied that the Respondents were entitled to withhold rent or to an abatement of rent as a result of any alleged failures on the part of Mr White in this regard.
26. The Respondents alleged that they had been advised that the late Mr White had been an unregistered landlord and that this could have resulted in

Edinburgh City Council issuing a Rent Penalty Notice but it was not suggested that any such notice had been issued to Mr White or to his Executor and in the absence of such a notice it would not be open to the Tribunal to find that rent was not due to be paid.

27. The Respondents submitted that they had paid £250.00 for a new washing machine at the property and £600.00 for repairs to the gas boiler but were unable to produce any documentary evidence to vouch for this expenditure. However, the Applicant's representative adopted a pragmatic approach and agreed to deduct £850.00 from the claim.
28. In the application the Applicant's representatives sought interest at the judicial rate of 8% on the sum claimed. They did not seek interest on the amended sum claimed at the Case Management Discussion. The Tribunal does not have power to apply interest at the judicial rate but may in terms of Rule 41A of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 include interest when making an order for payment either at the rate stated in the relevant tenancy agreement or at a rate determined by the Tribunal. The Tenancy agreement makes no provision for the payment of interest and therefore any award of interest is at the discretion of the Tribunal. Having taken account of the fact that the tenancy agreement was silent on the question of interest and having regard to the circumstances as a whole the Tribunal does not consider that it would be appropriate to make an award of interest on the sum awarded.

### **Decision**

29. The Tribunal finds the applicant entitled to an order for payment by the Respondents in the sum of £17435.00.

### **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.**

**Graham Harding  
Legal Member/Chair**

**13 July 2020  
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