



**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/20/0726

Re: Property at 16 Spey Drive, Coatbridge, ML5 5LZ (“the Property”)

Parties:

Mr David Pollock, 24 Fendoch Street, Glasgow, G32 7TH (“the Applicant”)

**Mrs Myra Mitchell, 11 Meagy Road, Castlederg, Northern Ireland, BT81 7NX
 (“the Respondent”)**

Tribunal Members:

Andrew Upton (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Application should be refused.

FINDINGS IN FACT

1. The Applicant was the tenant of the Respondent of the Property.
2. The rent was £550 per calendar month.
3. The Applicant paid a tenancy deposit of £550.
4. The Respondent has not returned any part of the tenancy deposit to the Applicant.
5. For the period 26 March 2018 until 2 December 2019, the Applicant ought to have made payment to the Respondent of rent in the sum of £11,108.
6. During the period 6 March 2018 until 2 December 2019, the Applicant made payment to the Respondent of rent in the total aggregate sum of £10,160

towards rent falling due between 26 March 2018 until the termination of the tenancy.

7. As at the date of the Hearing, the Applicant was in arrears of rent in a sum not less than £948, which is more than the Applicant's tenancy deposit.

FINDINGS IN FACT AND LAW

1. The Applicant having failed to make full payment of rent to the Respondent, the Respondent is entitled to deduct the Applicant's rent arrears from the tenancy deposit.

STATEMENT OF REASONS

1. This application called for a Hearing by teleconference on 30 July 2020 at 10am, together with the related application PR/19/4109. Both parties were present for the Hearing by teleconference. The Respondent was assisted by Mrs Judith Stewart, a friend and lay representative.
2. In this application, the Applicant seeks to recover payment of his tenancy deposit. The application is defended on the basis that the Respondent asserts that the Applicant owes rent arrears in a sum greater than the tenancy deposit.

Application to Adjourn

Submissions

3. Approximately 45 minutes into the Hearing, it became clear that the Applicant was unable to state what sums he had paid to either the Respondent directly or to her letting agent. He indicated that he would need to check what payments had been made. On that basis, he asked to adjourn the Hearing to recover that information. He stated that he had not understood that the Hearing was a substantive hearing, and had thought that it was a preliminary hearing. He explained that his related application had first had a case management discussion before the Hearing was fixed, and had expected the same procedure in this application.
4. The application to adjourn was opposed by the Respondent. The application was causing her anxiety, and had been going on for some time already. She wished the matter to be concluded.

Decision on Application to Adjourn

5. Having heard the parties, the Tribunal refused the application to adjourn the Hearing. In the correspondence issued to the Applicant by the Tribunal, the Hearing was plainly described as a "Hearing". That is in contrast with a "Case

Management Discussion”, which is how it would have been described if it had been a procedural hearing. Further, parties to the Tribunal are obliged to familiarise themselves with the Rules of the Tribunal, including those relating to the lodging of documents. Had the Applicant checked the Rules, he would have recognised that he required to lodge any documents that he wished to found upon in advance of the Hearing. In addition, this was the second Hearing fixed in this application; the first having been discharged administratively due to the restrictions on Tribunal activities caused by the coronavirus pandemic. As such, not only had the Applicant failed to provide his evidence in advance of the first hearing in April 2020, he had failed to provide it in advance of this Hearing. The Respondent, by contrast, had submitted her position and evidence well in advance of the Hearing. The Applicant had fair notice of her case, and was unprepared. Having regard to the overriding objective to determine applications expediently, the Tribunal determined that it would not be appropriate to adjourn the hearing.

Evidence

6. During the Hearing, the following evidence was agreed between the parties:-
- a. The Applicant was the tenant of the Respondent of the Property.
 - b. The rent was £550 per calendar month.
 - c. The Applicant paid a tenancy deposit of £550.
 - d. The Respondent has not returned any part of the tenancy deposit to the Applicant.
 - e. That the following payments were made by the Applicant to the Respondent towards rent:-

Date of Payment	Sum Paid
2 April 2018	£250.00
6 April 2018	£60.00
2 May 2018	£250.00
5 May 2018	£200.00
12 May 2018	£100.00
4 June 2018	£200.00
9 June 2018	£150.00
13 June 2018	£100.00
18 June 2018	£100.00
2 July 2018	£250.00
7 July 2018	£100.00
16 July 2018	£100.00
21 July 2018	£100.00
6 August 2018	£250.00
20 August 2018	£150.00
25 August 2018	£150.00
10 September 2018	£250.00
22 September 2018	£250.00
1 October 2018	£150.00
13 October 2018	£250.00

27 October 2018	£100.00
1 November 2018	£100.00
10 November 2018	£150.00
24 November 2018	£200.00
4 December 2018	£150.00
22 December 2018	£500.00
2 February 2019	£200.00
28 February 2019	£150.00
2 March 2019	£250.00
18 March 2019	£150.00
25 March 2019	£100.00
3 April 2019	£250.00
13 April 2019	£200.00
23 April 2019	£150.00
30 April 2019	£250.00
18 May 2019	£250.00
1 June 2019	£450.00
18 June 2019	£100.00
24 June 2019	£150.00
28 June 2019	£200.00
1 July 2019	£100.00
4 July 2019	£150.00
20 July 2019	£200.00
31 July 2019	£250.00
3 August 2019	£100.00
21 August 2019	£100.00
30 August 2019	£300.00
2 September 2019	£50.00
30 September 2019	£400.00
8 October 2019	£150.00
30 October 2019	£200.00
2 November 2019	£200.00

- f. The rent payment falling due on 26 November 2019 was a pro-rata rent payment for 6 days of £108.00.

David Pollock

7. The Applicant spoke to his belief that the Respondent's claims that he was in significant arrears dating from 2018/19 were false. He expressed the view that, whilst he accepted that the payments noted above were the only ones made to the respondent during that period, he had made other payments prior to 2 April 2018 that had not been accounted for. He spoke to having paid the first month's rent in advance to the Respondent's letting agent, Location Lettings, together with the tenancy deposit. He said that he had paid the December 2017, January 2018 and February 2018 rent payment to Location. He was unable to clearly state what sums had been paid by him in March 2018, or to whom. He accepted that he had been told to pay rent directly to the Respondent by March 2018.

8. When asked by the Tribunal to confirm what further payments he was claiming to have made and to whom, the Applicant was vague and evasive. He was unable to clearly state what payments he considered the Applicant had not taken account of, or who they had been made to. Instead, he focused on what he perceived as a calculation error by the Respondent. He said that full rent was not due for eight months during the period April to November 2019 because the payment in November 2019 was a pro-rata rent payment for the period up to lease termination on 2 December 2019. That rent payment was therefore £108. The Applicant also highlighted the email correspondence lodged by the Respondent in terms of which she regularly advised the Applicant that he was several hundred pounds in arrears and sought payment to clear his rent account. The Applicant asserted that he did not know that he was in significant arrears until after he had lodged the related application relating to breach of the Tenancy Deposit Schemes (Scotland) Regulations 2011 by the Respondent. The Applicant stated that he believed that the arrears figure was false and designed to counter that application.
9. The Applicant said that, if there were any arrears, it was only for a couple of hundred pounds at most.

Myra Mitchell

10. The Respondent adopted her written statement as her evidence. She said that the Applicant had been advised by Location Lettings to make payment of rent directly to the Respondent in February 2018, and that the payment falling due on 26 February 2018 was to be the first direct payment. No payment was made by the Applicant to the Respondent in February 2018, but she could not say with certainty that no payments had been made by the Applicant to Location Lettings. The Respondent spoke to having had significant problems with Location Lettings, and to being owed monies by that letting agent.
11. The Tribunal focused on the difference between what the Respondent claimed she had been paid by the Applicant and the sums contractually due by him. The Respondent explained that she had relied upon her accountant to reconcile the payments received with the sums contractually due, and that she had been somewhat lax in her monitoring of the Applicant's payments. Her monitoring process altered in 2019 when she noticed the sporadic nature of the Applicant's payments, and she then took a more active role in monitoring his payments. That was her explanation for why she did not know that he was due significant arrears from the financial year 2018/19.
12. The Respondent stated that the Applicant had made payment of the sums specified above. In addition, the Applicant had made two payments of £250 during March 2018 (on 6 and 10 March 2018) towards the rent payment falling due in March 2018. As such, he had underpaid for March 2018 by £50. She also accepted that the November 2019 payment was agreed to be a pro-rata payment of £108.

Submissions

The Applicant

13. The Applicant's submission was simple: (i) he had paid a tenancy deposit of £550; (ii) the Respondent had no legal reason to deduct payments from that deposit; and (iii) he was entitled to full return of that deposit. The Respondent had not told him about the 2018/19 arrears, and had given him the impression that only small payments were required to clear his arrears during 2019. In the event that the Tribunal determined that an amount ought to be deducted for rent arrears, then he should be entitled to the balance of the deposit.

The Respondent

14. The Respondent's submission was equally simple: the Applicant was in rent arrears of £1,498.00, and the Respondent was entitled to apply the deposit to those arrears.

Decision

Assessment of the Witnesses

15. The Tribunal found the Applicant to be neither credible nor reliable. He was unable to answer straightforward questions regarding the sums that he claimed to have paid. He was well aware, and had been since at least 26 January 2020 when he received emails from the Respondent detailing the extent of his rent payments, that the Respondent was asserting that he was in significant rent arrears. His answer to that allegation would have been to produce evidence of his payments over and above what the Respondent was saying. Instead, he sought to vaguely assert that other sums had been paid to Location Lettings that should be taken into account. The Tribunal formed the view that the Applicant was seeking to benefit from the relative uncertainty created by the failure by Location Lettings to properly carry out their instructions, and the change in payment arrangements in February 2018. Of note was the Applicant's apparent suggestion that he had paid sufficient sums to Location Lettings in advance to cover the arrears claimed by the Respondent. That would suggest that the Applicant had paid Location Lettings multiple months in advance which, having regard to the accepted payment history in this case, is wholly incredible. The Tribunal considered that his responses to the questions regarding his payments were disingenuous.
16. In contrast, the Tribunal found the Respondent to be both credible and reliable. She gave her evidence in a straight-forward manner, and made appropriate concessions when her calculation error regarding the November 2019 rent payment was highlighted to her. Insofar as any evidence given by the Respondent conflicted with that of the Applicant, we accordingly preferred the Respondent's evidence.

Conclusions

17. The Tribunal accepts that the total sum paid by the Respondent to the Applicant in respect of the rent payment falling due on 26 March 2018 was £500. On that basis, and having regard to the agreed table of payments, the

Tribunal finds that during the period 6 March 2018 until the termination of the tenancy, the Applicant made payments to the Respondent in the total aggregate sum of £10,160. The rent contractually due for that same period was £11,108; being twenty rent payments of £550 and one rent payment of £108. Accordingly, at the date of termination of the tenancy, the Applicant was in rent arrears of at least £948.

18. To be clear, the Tribunal has found that “at least” £948 was due by the Applicant because the Tribunal was unable to form a concluded view regarding the February 2018 rent payment. However, given that it was satisfied on the balance of probabilities that a sum in excess of the tenancy deposit was due by the Applicant to the Respondent, the Tribunal did not need to reach a conclusion regarding the February 2018 rent in order to determine this application.
19. The final point to consider is whether there is any reason in law why the Applicant should be found not liable to the Respondent for the rent arrears relating to the financial year 2018/19. It is our view that there is not. A tenant ought, in our view, to know what he or she is due to pay in rent, and what has been paid in comparison. The tenant ought to take steps to account for their own payments against their obligations. It is not the landlord’s role to remind the tenant of what they have paid in comparison to what they owe. There is no inference to be drawn from a landlord’s failure to chase rent arrears immediately, or indeed at any point up until the obligation to pay has prescribed after five years under the Prescription and Limitation (Scotland) Act 1973.
20. Separately, there is nothing in any of the emails produced to the Tribunal that suggests that the Respondent intended to waive her entitlement to payment from the Applicant of his rent arrears during the financial year 2018/19. We accept her evidence that her failure to raise this with the tenant was due to her own accounting inefficiencies, and only came to light after the termination of the tenancy.
21. It follows that the Tribunal finds that the Applicant is indebted to the Respondent in a sum not less than £948, and that the Respondent was entitled to apply the full amount of the Applicant’s tenancy deposit to that debt. We refuse this application.

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.

Andrew Upton

30July2020

Legal Member/Chair

Date