



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber) under Section 71 of the Private Housing  
(Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/20/1480**

**Re: Property at 115 Cardross Street, 0/2, Glasgow, G31 2DL (“the Property”)**

**Parties:**

**Mr Md Shamsedur Rahman, Mrs Sadia Ahmed, 17 The Paddock, Busby,  
Glasgow, East Renfrewshire, G76 8SL (“the Applicant”)**

**Miss Monica Melero Sobrino, Miss Anastacia Papaioannou, UNKNOWN,  
UNKNOWN (“the Respondent”)**

**Tribunal Members:**

**Jan Todd (Legal Member)  
Ahsan Khan (Ordinary Member)**

**Decision in absence of the Respondents**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the  
Tribunal”) determined that an order for payment of the sum of £5250 be  
granted.**

**Background**

1. This was a hearing fixed to consider the application made by the Applicants Mr Md Shamsedur Rahman and Mrs Sadia Ahmed Jinia for an order for payment of £5250 representing rent due from the tenants Ms Monica Sobrino and Ms Anastacia Papaioannou, the respondents.
2. The Application had been lodged on 6<sup>th</sup> July 2020 and sought payment of £4200 originally for rent due from April 2020 to July 2020 and claimed that the tenants had left the property temporarily at the end of March 2020 but that they were not ending the tenancy and that they had left belongings there, however did not pay rent from the beginning of March 2020..
3. The following papers were lodged with the application:-

- a. Copy of the Tenancy Agreement between Ms Sadia Jinia the landlord and the Respondents dated 1<sup>st</sup> November and 1<sup>st</sup> December 2019 respectively.
  - b. An inventory of the condition of the Property, landlord's checklist and electrical and gas reports
  - c. A copy of bank statements
  - d. Copy letters asking for payment from Mr Rahman to the Respondents
  - e. Transcript of text messages between the parties
  - f. Letter from Plumber Jim McMeekin re visits to property on February and April 2020
4. Due to the Covid 19 pandemic a Case Management Discussion was arranged to take place by teleconference on 22<sup>nd</sup> September 2020 at 10am.
  5. The Respondents were invited to attend the CMD by letter. The invitation was served on the Respondent by service by Sheriff Officer on 25<sup>th</sup> August 2020 by letterbox service at the Property address.
  6. The Applicant submitted a further statement and rent statement dated 24<sup>th</sup> August showing and seeking a new balance due of £5,250.
  7. The Respondents lodged a written response by e-mail dated 13<sup>th</sup> September 2020 from the second named Respondent instructing that any correspondence should be sent to this e-mail for both herself and Monica. In the response the Respondents make two main allegations namely that the "property was not in working order or condition to warrant it being let, that countless and fruitless texts e-mails and calls most of which fell on deaf ears and were ignored, we still paid rent payments of £1,050 pcm as due on the promise that Sadia Ahmed would put right make all necessary repairs and credit us with a rent abatement for the same of paying rent for outstanding conditions imminent repairs that were never forthwith."
  8. The Second allegation is that the tenants left in March and did not return. That due to Covid and a medical condition they had to find another property and pay a new deposit and make rent payments on the property and a storage unit. They went on to state that "At no time thereafter were we in possession of 115 Cardross St the only item in our possession were the keys which were left at the Property"
  9. On 13<sup>th</sup> September 2020 the Respondents asked how to go about seeking an extension and were advised that they would have to seek a postponement and that the request would have to be submitted in writing and it and any supporting document would be crossed over to the other party. On 16<sup>th</sup> September Ms Papaioannou wrote clarifying that they were seeking representation for this matter and that she would also be out of the country and for these reasons were seeking an extension. The Applicant responded opposing the delay as he was anxious to proceed due to the level of rent arrears, the length of time it had already taken to come before the Tribunal and the fact the tenants had admitted in their e-mail of 13<sup>th</sup> September that they were not living in the Property. The Tribunal asked for evidence to support the claim Ms Papaioannou was going to be out of the country and for confirmation that both respondents were unable to attend Ms Papaioannou responded by e-mail on 21<sup>st</sup> September advising that their travel plans had to be cancelled because they were both unwell, experiencing symptoms and

seeking a test as well as representation. Given this request a postponement was granted due to the illness of the Respondents and a new CMD fixed for 22<sup>nd</sup> October.

10. At the CMD the first named Applicant Mr Rahman, who is a joint owner in the Property, was present, Mrs Jinia was not present and neither of the respondents were present on the call. Neither had asked for a further postponement or made any further written representations.
11. Mr Rahman, who was appearing for himself and Mrs Jinia, reiterated the position he had put on his application, namely that the Respondents had indicated they wanted to leave at the end of March but then changed their view and said they would move out temporarily and keep their belongings there. The Applicant's view is that they never moved out, did not give him 28 days' notice and that he never received the keys to the Property from the Respondents. He also advised he visited the Property in July and found a woman living there who said she was there to clean but it appeared to him she seemed to have moved in and while he was there she spoke to the Respondents on the telephone.
12. Mr Rahman also advised there may be damage to the Property but he has not been able to visit it to check and this may have an impact on what he claims from the deposit, and that he had also raised an action for abandonment based on the Respondents claiming they have moved out of the property.
13. The Tribunal determined that the matter needed to proceed to a hearing to determine the application as there were opposing views put forward by the Respondents in writing suggesting they had already given the tenancy up or that there were issues with the tenancy that meant they should not have to pay rent.
14. In order to focus the matters in dispute the Tribunal issued a direction for the following to be lodged:-
  - a. The Applicant needs to clarify what rent he is claiming. The Applicant should provide a fresh rent statement advising which months he is claiming rent for.
  - b. The Applicant is required to lodge the text messages from the Respondents advising they would leave at the end of March and then advising they want to keep the tenancy but move out temporarily and keep their belongings there.
  - c. The Respondents are required to advise and produce any evidence of their intention to leave and in particular evidence of any notice given to the landlord.
  - d. There is a dispute over whether the keys were left in the Property or not returned to the Landlord. Both parties are invited to advise what witnesses they wish to bring to the Tribunal hearing and to confirm if both Applicants and both Respondents will be attending as witnesses.

## **The Hearing**

15. On the morning of the hearing the Tribunal was sent by the administrative team of the Housing and Property Tribunal a copy of an e-mail sent by Ms Papaioannou at 2.40 am asking for a further postponement of the hearing. She had previously on 20<sup>th</sup> November written to the Tribunal asking for a postponement of the Eviction action raised under HPC/EV/20/1774 which was also due to be considered at a CMD call at the same time, namely 10am and by teleconference on 23<sup>rd</sup> November. She had advised that she was unwell and would not be able to attend but did not enclose any medical certificate. The Tribunal administration had written back advising that without a medical certificate the Hearing and CMD for both cases would proceed. Ms Papaioannou indicated she was only aware of the eviction case and not the civil case but was reminded of both by the case worker. Along with the Respondent's e-mail of 23<sup>rd</sup> November asking for a postponement in respect of both cases, was a letter from her GP dated 20<sup>th</sup> November 2020 advising that the Respondent had been prescribed 2 medications for a medical condition. There was no indication in the letter that the Respondent was not able or well enough to attend the hearing which as before was being conducted by teleconference. There was no indication that the first named respondent was unwell or would not be able to attend the Hearing. The Tribunal considered this but rejected the application for a postponement on the grounds that there was no indication in the GP letter (which was addressed to whom it may concern) that the second named respondent was unable to attend on a teleconference, that this was a very late request and it would be unfair to the Applicant, in the absence of a specific medical certificate indicating the Respondent was unable to attend or take part and that there was no indication that the first named respondent was unable to take part. The Legal Member instructed that a response be sent to the Respondents advising them that the Hearing would proceed and the reasons for the rejection of the very late postponement request.
16. The Legal Member opened the Hearing by making introductions and advising on the purpose of the Hearing and how the proceedings would be conducted especially considering they were being conducted by teleconference. She also confirmed that the Tribunal would consider the civil application first and then the Hearing would finish and the Legal Member would then invite the Applicant to take part in the CMD for the Eviction Application.
17. The Applicant Mr Rahman was again in attendance on his own but representing both Applicants. Neither of the Respondents attended and considering they were made aware of the Hearing by e-mail addressed to the e-mail address they had instructed the Tribunal to communicate with them, the Tribunal felt it was fair and just to proceed in their absence.
18. Mr Rahman advised that as per his written representations his position was that the Respondents had been his first tenants in the Property after he and his wife purchased it in 2019, that they had entered into a lease and that they paid rent for the first few months until the end of March 2020. He advised that around the beginning of March he had sent them a message asking if they were okay and Ms Papaioannou had replied advising they were and the shower which had had a leak seemed to be fixed as there was no water leaking. He then confirmed that he heard again from Ms Papaioannou at the end of March that they were okay health wise just self-isolating like most of Scotland, however the leak was back and the Applicant advised he replied

saying a plumber would attend on Wednesday afternoon. The Applicant advised that the Respondent replied to this on 31<sup>st</sup> March saying not to send the plumber as they are in self-isolation and that she had just sent an e-mail. He then referred to the e-mail from both Respondents addressed to both Applicants dated Tuesday 31<sup>st</sup> March 2020 sent at 7.35 pm which advised that the tenants were going to leave the accommodation "until this property can be fixed to liveable standards". They went on to say they were leaving for three months and since they were not living in the Property they would not be paying rent and would only take the belongings they needed. He advised that they had made it clear he was to tell them if he was sending any workers and that they were not terminating the tenancy. The Applicant believes the tenants had moved into a friend's house which was vacant and which he thinks they may have stayed in when the friend did not return after 3 months as expected.

19. The Applicant confirmed that he had sent a plumber and an electrician to the Property to fix any issues and at no time had either Respondent sent him confirmation they were leaving the Property or handed over the keys. He confirmed that he visited the Property in July when he was advised by a neighbour that someone was living in there. and He found a woman there whom the Respondents refer to as being there just to clean although the Mr Rahman felt she was confused and unable to explain exactly what she was doing there and she contacted the Respondents by phone while he was there.
20. Mr Rahman finished his evidence by confirming he has not seen any keys left at the Property and that he does not have a fob for the main door as he gave both copies to the tenants and they have not returned them. Because of the tenants' response to his text of 26<sup>th</sup> August saying they were no longer there he served a notice to leave asking them to vacate by 30<sup>th</sup> September failing which he would raise eviction action.
21. The only written response from the Respondents is their e-mail of 13<sup>th</sup> September. They allege there are issues with the Property but do not give any details. They also advised they have not been in the Property since the end of March 2020 but do not confirm or submit that they gave notice just that they are no longer there and should not have to pay rent. The Respondents were requested to provide further details in the Direction and asked to advise what witnesses they would bring. There has been no response until the 20<sup>th</sup> November when the second Respondent indicated she was seeking a further postponement.

#### • Findings in Fact

1. The parties entered into a lease of the Property which commenced on 31<sup>st</sup> October 2019 and continues until terminated by either Party in terms of clause 23 of the lease.
2. The Rent due in terms of the lease is £1,050 every calendar month payable in advance
3. The Respondents left the Property temporarily on 31<sup>st</sup> March 2020 after Lockdown began and alleging there were issues with the Property.
4. The Respondents refused to allow a plumber access to the Property at the end of March saying they were isolating but then moved elsewhere on 31<sup>st</sup> March 2020.

5. The Respondents have not given written notice of their intention to terminate the tenancy and in fact specifically said in their e-mail of 31<sup>st</sup> March they were not terminating the Tenancy.
6. The Respondents have not handed back the keys to the Applicants and have not left them in the Property.
7. The Respondents failed to pay anything towards the rent due after 3<sup>rd</sup> March 2020 despite being asked to do so.
8. The rent outstanding at 31<sup>st</sup> August is £5,250 representing rent from April to August.
9. The Applicant sent a plumber out to the Property to attend to matters complained of by the Respondents. The Plumber attended on 21<sup>st</sup> and 25<sup>th</sup> February and although not seeing any leak replaced the shower hose and resealed possible areas of leakage. The Plumber Mr Jim McMeekin attended again on or around April 2020 after further reports of leaking to carry out further works. The Applicant has also investigated and attended to issues with light fittings in the kitchen that were complained of.
10. The Applicant has served a Notice to Leave on both Respondents relying on Ground 10 of the Schedule 5 of the Private Housing (Tenancies) (Scotland) Act 2016 that the tenant is not occupying the let Property. The Notice to Leave calls on the Respondents to leave by 30<sup>th</sup> September 2020.
11. The Applicant has submitted an application for eviction of the Respondents to the First Tier Tribunal for Scotland Housing and Property Tribunal on 8<sup>th</sup> September 2020.

- **Reasons for Decision**

12. The parties entered into a lease where the Respondents leased the Property from the Applicant from 31<sup>st</sup> October 2019 and agreed to pay £1,050 every calendar month in rent.
13. It appears the Respondents left the Property at the end of March 2020 but only temporarily. The Respondents confirm this in their e-mail of 31<sup>st</sup> March addressed to the Applicant and specifically state that:-  
*“we are temporary moving to this accommodation until this Property can be fixed to liveable standards. We understand it might be difficult to get workers during this time so we are leaving for a short period of three months, I was advised that if we are not living in the Property to cease paying rent and to ask that you reimburse us for the temporary housing cost as this is due to no fault of our own. I was advised to take the belongings that we need and since we aren’t moving out only take the items that we cannot live without. We are in no way ending our tenancy.”*
14. The Applicant originally sought rent arrears of £4200 but this represented only rent due to the end of July 2020.
15. The Applicant has requested to amend the sum sought to allow them to claim rent due up to 31<sup>st</sup> August 2020 and has complied with Rule 14A of the First Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 which states that any amendment to the application including to the sum claimed must be intimated at least 14 days prior to a

case management discussion or hearing The Respondents have failed to make any payment of rent from 3<sup>rd</sup> March 2020. The Applicant is entitled to recover rent lawfully due.

16. The Respondents have made no appearance at the CMD or this hearing and made no further written response or provided a response to the Direction given.
17. The Respondents stated in their e-mail of 13<sup>th</sup> September to the Tribunal that there were issues with the Property, including “hazards such as electrical fire, life and safety hazards and due to the negligence of the Landlords and Covid” they moved out. They went on to confirm that they had to find suitable alternative accommodation and paid deposit and were making rent payments on the new property and storage unit. They finally claim that at no time were they in possession of 115 Cardross St Glasgow and the only item in their shared possession were keys and they say they left them in the Property. In the same e-mail however they mention that a woman was in their former Property to clean the place but that Mr Rahman opened the Property with a fob and key and forced her out at which points keys were deposited and left on the ledge in the foyer. They go on to say that as nothing was repaired they left and sought new living arrangements and refused to sign an amended tenancy agreement and aver that they moved 5 months ago and finish by stating the landlord holds possession of the Property. The Respondents have not offered any further evidence written or oral to say why the Property was not fit to live in. The Respondents are contradictory in their statements advising on the one hand that they had moved out and implying they have given up or ended the tenancy but saying on the other there were issues with the Property and that is why they should not pay rent.
18. The Applicants have lodged a transcript of text messages between Mr Rahman and the Second Respondent showing that he has sent a plumber to the Property in February and that on 5<sup>th</sup> March 2020 when he checked with Ms Papaioannou she advised it was working and nothing was leaking. He has lodged a written statement from his plumber to verify this and to confirm that he went back in April to carry out further works.
19. The Applicant also confirmed that two other issues the tenants had raised were dealt with, the first is 4 out of 12 spotlights in the kitchen were not working and he explained that to fix them would have involved a lot of work as advised by an electrician he sent in November 2019 and that Ms Papaioannou accepted that it was not realistic to do this in a text message of 14<sup>th</sup> November 2019 saying “So the electrician said it could not be done unless they took down the ceiling and it isn’t worth it is fine without them.”
20. The only other issue the Applicant advised the tenants had raised was some rubbish which had been left by the previous owner in the garden and he had left it there in case the owner wanted it returned. He had not received keys to the garden from the seller and eventually had to break the lock to get access. He has since removed the rubbish.
21. The Tribunal accepted the written evidence and verbal statements made by the Applicant Mr Rahman, who the Tribunal found convincing and credible in his evidence that the Respondents had left the Property on 31<sup>st</sup> March 2020 but had kept control of it, did not at any point return the keys and, until their response to a text message in August 2020 and their response to the Tribunal of 13<sup>th</sup> September 2020, had previously indicated by their e-mail and

actions that they were still controlling the Property. The Respondents have not served any written notice terminating the tenancy nor indicated they wished it to end until possibly the end of August in response to a text from Mr Rahman. Mr Rahman has pointed out to the Respondents in an e-mail of 22<sup>nd</sup> June that he was not evicting them (at that point) and if they wished to end the tenancy they should give him 28 days notice.

22. The Respondents say they left the keys in the Property when they left in March but this is contradicted by their stated intention not to end the tenancy but to leave for a temporary period and their actions as shown in the transcript of text messages with the Applicant showing they were controlling when he accessed the Property. It is also contradicted by the Respondents' claim that a cleaner was in the Property with their knowledge in July 2020. The Applicant also confirmed that he has been back to the Property in September, after seeing the Respondents' written response saying they are not in the Property, and confirming they have other accommodation, and he confirmed that there were no keys there. He also advised he had to ask a neighbour to let him in the main door as he has no fob to use to access the main door although he retained a key for the flat door.
23. The Tribunal finds that the Applicant has ended the tenancy by serving a Notice to Leave dated 2<sup>nd</sup> September which he e-mailed to the Respondents at the address set out in the lease advising them to leave by 30<sup>th</sup> September. In terms of clause 23 of the lease that brings the tenancy to an end at either the later date of the date specified in the Notice to Leave if the Tenants choose to leave the Property or the date the tenants left the Property. In this case the later date is 30<sup>th</sup> September 2020 the date specified in the Notice to leave.
24. The rent outstanding and due by the Respondent to 31<sup>st</sup> August 2020 is £5,250 which is the amount currently claimed by the Applicant.
25. Given the tenancy has only come to an end when the Landlord has served a Notice to Leave bringing it to an end, that the Respondents have not brought it to an end earlier by sending a notice in writing and that there is no evidence of the Property not being habitable or below the tolerable standard which would justify abatement of rent then the Tribunal finds that the rent outstanding is due and owing.
26. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed.

- **Decision**

The order for payment in respect of rent arrears amounting to £5,250 was granted.

## **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.

Jan Todd  
**Legal Member/Chair**

24<sup>th</sup> November 2020  
**Date**