



A Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/CV/21/0506

Re: Property at 58 Cecil Street, Glasgow, G12 8RJ (“the Property”)

Parties:

Mrs Jennifer Miller, Caughside, Kilmacolm, PA13 4SP (“the Applicant”)

Ms Ellie Thomson, 1 The Grove, Monktonhill Road, Troon, KA10 7FX (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that a payment order in the sum of one hundred and eleven pounds only (£111.00) be granted in favour of the Applicant and against the Respondent.

The decision of the Tribunal was unanimous.

Background

1. This is an application for a payment order in terms of Rule 111 of the Tribunal rules of procedure. The application was received by the Tribunal on 8 March 2021 and was accepted by the Tribunal on 30 March 2021. A Case management discussion was fixed for 12 May 2021 at 10am. Both the Applicant and the Respondent attended the Case Management discussion and represented themselves. There was no agreement between the parties as to what amount if any was owed to the Applicant by the Respondent. Two issues arose at the case management discussion which were disputed by the parties. The first related to whether the Applicant had agreed with the Respondent a ‘rent-free’ month at the property for October 2020 and whether the Respondent had overpaid for utilities used at the property. The Respondent’s position

was that she had overpaid by £200 and this should be set against any amount being requested by the Applicant by way of a payment order.

2. The Tribunal fixed a Hearing for 28th June 2021 at 10am to take place by audio teleconference. After the case management discussion the Tribunal issued a note, the terms of which should be referred to along with this decision. The Tribunal issued a Direction requiring both parties to lodge a list of witnesses and productions not less than two weeks before the Hearing, and to provide written representations on the issues raised at the case management discussion i.e. whether rent was lawfully due for the month of October 2020, the month for which it was suggested by the Respondent that an offer of a rent free month had been made which was then withdrawn, whether the issue of overpaid utilities was relevant to the payment order and what sums of any were due by the Respondent to the Applicant in terms of the application. Both parties lodged responses to the Direction, the Applicant's response being lodged on 11th June 2021 and the Respondent's response being lodged on 24 June 2021.

The Hearing

3. At the Hearing on 28th June 2021 the Tribunal had sight of the application, a private residential tenancy agreement, a rent statement, bank statements, e mails and written confirmation from the joint owner of the property for the Applicant to proceed in her name only. The Applicant had also lodged her response to the Direction and had emailed the Tribunal on 25 June 2021 expressing her concern about whether the Tribunal should consider the response to the Direction from the Respondent. For the Respondent, the Tribunal had sight of a series of emails between the parties and written representations and the Respondent's response to the Direction together with information regarding a change of representative received on the morning of the Hearing.

4. The Applicant Mrs Miller attended the hearing and represented herself. The Respondent Miss Thomson attended the Hearing and was represented by Ms Day. The Tribunal asked the parties to address a number of preliminary issues. These related to the question of whether the Tribunal should allow the matter of any overpayment of utilities to be introduced at the Hearing, the lateness of the Respondent's direction response and the change of representative which had been intimated to the Tribunal on the morning of the hearing.

5. The Applicant's position was that the application related only to the rent arrears at the property which she was seeking from the Respondent. She said there had been no overpayment by the Respondent of utilities and that the Tribunal need not consider that matter. She expressed her concern about the Respondent's late response to the Direction and whether this should be considered given that there had been a time limit for responses which she had met, but the Respondent had not. She accepted that the Direction response from the Respondent did not add much to the Respondent's position as set out at the case management discussion and she indicated that nothing in the Direction response from the Respondent prevented her from going ahead with the Hearing.

6. For the Respondent it was explained that the Respondent had been seeking advice from the Citizens Advice Bureau. She had been allocated a caseworker and she was told he was to be on leave for five days around the time that the Direction response was required. Ms Day indicated that the Respondent had voiced concerns over the lateness but had been given to understand by an individual at the Citizens Advice Bureau that this would "not be a problem". Coupled with this, Ms Day indicated that the Respondent had been finishing up at university and preparing to move to France. Ms Day said that she had become available to represent the Respondent and that she had contacted one of the HPC caseworkers on Friday 25th June who had said that a change of representation would be "fine" at that stage. Miss Day indicated that it was appropriate for the Tribunal to consider the overpayment of utilities as this was part of the Respondent's concern about the whole way that the tenancy had been managed and pointed to the failure to provide utility bills or a breakdown of the actual usage.

7. The Tribunal adjourned in order to consider whether it should take account of the Direction response lodged by the Respondent although late and whether the Tribunal should allow the matter of the suggested overpayment of utilities to be considered in the Hearing.

8. When the Hearing reconvened the parties were advised that given the reasons for the lateness of the Respondent's response to the Direction and the fact that it did not prevent the Applicant from presenting her position at the Hearing that the Direction response would be received and considered.

9. As far as the issue of the suggested overpayment of utilities was concerned the Tribunal indicated that it would permit this issue to be raised as part of the Hearing. The Tribunal indicated that it did not view this matter as a counterclaim as the issue around overpayment of utilities did not require to be resolved in order to ascertain how much rent was lawfully due. However since both parties were suggesting each owed the other sums of money arising from the tenancy agreement, it seemed fair and appropriate in the circumstances to allow both issues to be raised, effectively for the Respondent to be permitted to make representations that any overpayment in respect of the utilities ought to be set against any outstanding rent which might be found to be due.

10. Since the question of the overpayment of utilities was confirmed to be an issue for determination only at this point in the Hearing, the Tribunal clarified with both parties whether they wished time to consider their positions on this issue or lodge additional evidence and indeed if they were able to proceed in relation to both issues. The Applicant indicated that she was in a position to proceed with the Hearing and Ms Day confirmed on behalf of the Respondent that she too was in a position to proceed with the hearing.

11. It was not disputed between the parties that they had entered into a private residential tenancy at the property with effect from 15 September 2019 and that this had ended on 16 November 2020. The monthly rent payable at the property was £550 per month payable in advance and a deposit of £650 was recovered by the Applicant from a tenancy deposit scheme and was to put towards rent arrears which had

accrued. It was not in dispute that the tenancy agreement required tenants to pay utilities monthly to the landlord on request.

12. It was also not in dispute that rent had not been paid by the Respondent at the property for the months of September and October 2020 and for the remainder of the tenancy agreement until 16th November 2020. The Respondent's position was that the rent was not due for October 2020 given the offer of the rent free month and that any sum left after that should be reduced by £200 in respect of overpayment of utilities. The Respondent's position was that she felt that £50 would settle the matter from her point of view.

13. The Applicant gave evidence on her own behalf in support of the application which was based on rent arrears for the months of September, October and up to 16 November 2020 minus the deposit which had been recovered from the tenancy deposit scheme making a sum of £739.

14. The Applicant gave evidence regarding the issue in dispute between the parties the question of whether there had been an agreement for a rent free month in October 2020. The Applicant accepted that on 29 April 2020 in response to an email from the Respondent seeking a rent reduction she had emailed her indicating that 'our policy is with students who extended their tenancy beyond the first year is to give them a rent free October. This equates to months of July and August at half price. This applies each year you extend your tenancy for another year. I might add that you will not find this in the lease but it is something which we give at our discretion'.

15. The Applicant explained that what this email referred to was a policy that she had for students who maintained the tenancy agreement at the property for July and August and into the next academic year, that a rent free October would be offered at her discretion. She explained that this was to assist students but also that she understood that she could not expect a tenant offered the rent free month to commit to staying for a further academic year. She explained that since the private residential tenancy had no end date, that such an offer carried an element of risk because a student could be given the rent-free month and then leave within that academic year. Her position on the email of 29th April 2020 was that this was not an offer as such but an explanation of what might be offered in the future. The Applicant accepted that the Respondent had responded by email to her own email setting out the rent-free month with words to the effect of 'thank you very much that sounds great'. The Applicant explained that she interpreted the reply as the Respondent confirming that she understood that this may be offered in the future. The Applicant's position in evidence was that at no point was her email setting out the rent-free month in October ever formally responded to nor did she receive any indication that the Respondent would be staying on and wished to accept the rent-free month.

16. The Applicant explained that as a result of financial losses in relation to another tenancy, again due to Covid 19, she emailed the Respondent on 7 August 2020 saying 'due to financial losses incurred during the coronavirus pandemic I am no longer in a position to offer you the discretionary free month in October. As mentioned previously at the end of this month I will be letting you know regarding your utility bills'.

17. The Applicant said in her evidence that she had sent this email out of courtesy to make the Respondent aware that the rent-free month could not be offered. When asked why in this email she had said I am no longer in a position to “offer” you the discretionary free month she described this as “unfortunate language”. The Applicant accepted that she had over a number of months between March 2020 and the end of the tenancy she been involved in email exchanges with the Respondent and accepted that in an email in July 2020 in relation to other matters the Respondent had said that she was happy in the flat and hoped to stay there for the duration of her time at university. However the Applicant’s position was that she had not been aware that the Respondent was absent from the property for an extended period. It was suggested to her in cross examination that she had been emailed about this by the Respondent but her position remained that she did not know the extent to which the Respondent had not occupied the flat.

18. The Applicant gave evidence and explained that there were a number of tenancies at the address. There was the flat which had been occupied by the Respondent Miss Thomson which was a two apartment with kitchen and shower room. This was the biggest flat at the property and was self-contained. There were also other rooms at the property with a shared kitchen and shower. The utilities available for all the properties were electricity and gas. Utilities were paid by tenants on a monthly basis. She explained that there was one utility bill in her name which covered all the properties with a shared meter, but that she had installed individual meters for each of the tenanted areas so that an accurate account could be taken of the usage by each tenant. Due to the Covid 19 pandemic and restrictions she had been unable to access the property in order to take meter readings and had advised the Respondent from March 2020 that she required to pay £50 each per month to cover utilities. The sum had been calculated based on an average of the amount of utilities used over the six month period from September 19th 2019 to February 2020. During this period from March 2020 the Respondent paid £250 for utilities at the property.

19. The Applicant had provided a breakdown of the payment of utilities in the response to the Tribunal’s Direction request and referred to this in her evidence. The actual utility bill for the whole property was not produced. She explained that from March to June 2020 the total bill for the tenancies’ usage was split between four tenants who were at the property as a whole, and from July to mid November 2020 it was split between three tenants as one was no longer there. In terms of the breakdown she indicated that the Respondent in fact owed her £23.16 which was the total outstanding for the flat at the property at which the Respondent had stayed from March 2020 to mid-November 2020. She pointed to the fact that the Respondent since March 2020 had paid £50 per month for five months only and had not paid for utilities for the remaining three and half months of her lease which did not end until 16 November 2020. Despite the fact that the Applicant indicated that the Respondent owed the sum of £23.16 for utilities she was not seeking this sum in terms of her application for a payment order. The Applicant confirmed that she had not accessed the property at all since March 2020 and therefore had been unable to obtain individual meter readings from the various properties. The breakdown she had lodged she said was an estimate for each tenant’s usage, based on an equal division of an actual bill for utilities for the tenancies at the property over the relevant period.

20. The Applicant’s position was that she had not been aware that the Respondent was absent from the property for an extended period. It was suggested to her in cross

examination that she had been e mailed about this by the Respondent but her position remained that she did not know the extent to which the Respondent had not occupied the flat. She agreed when asked that if the Respondent had not stayed in the property for an extended period of some months that the amount in the breakdown of utilities could be higher than the actual amount of her usage at the property. The Applicant indicated that the breakdown she had provided to the Tribunal was an accurate reflection of the overall bill, it was simply that she could not access individual meters due to Covid 19 restrictions, to confirm the actual amount owed at each property. She stressed that the Respondent had agreed the tenancy terms including payment for utilities and that she had worked out the payments in the only way possible, given that she could not access the individual meters to confirm as far as possible each tenant's usage. She also confirmed in her evidence that the Respondent had paid £34.40 for utilities in February 2020. This was before the Covid 19 pandemic restrictions and before she had emailed the Respondent increasing the payments to £50 per month which she said would be adjusted up or down when individual meters could be accessed and read.

21. The Respondent gave evidence on her own behalf. Her position was that she had requested a reduction in rent at the property in April 2020 and received an email response from the Applicant. She understood that response to indicate that if she kept the tenancy on in July and August, and into the new academic year a rent-free month would be offered in October. She indicated that she had responded quickly by email, thanking the Applicant, and indicating that "that sounds great". When asked if she had sent any more formal response in relation to what she construed as an offer of a rent free month, she said that she had not, but she continued the tenancy at the property and in July in the context of emails on other issues she had sent an email to the Applicant saying ' I love the flat and hope to be staying there for the duration of my time at Glasgow University' . She maintained that this email was relevant to her earlier acknowledgement of the offer. She said that the rent-free October had influenced her decision to stay on in the property. She said that at the time that the Applicant withdrew the offer by email on 7 August 2020 she had already kept the tenancy on for July and paid the rent for both July and August. She had emailed the Applicant later in August expressing her disappointment at the withdrawal of the rent free month.

22. As far as the utilities were concerned. the Respondent's evidence was to the effect that the monthly payment which she made towards the utilities increased during "lockdown" although she was not living at the property. She said that she understood how the amount of £50 per month had been worked out by the Applicant for each tenant to pay based on the previous six months' charges. She explained that her previous monthly utility bill was around £34. She said she had paid the £50 per month but on a number of occasions had asked the Applicant that individual flats' energy use be clarified and explaining that she was not staying at the property. She said in her evidence that from April 2020, over the period she was paying £50 per month in utilities, she had stayed at the property for about 10 days. In terms of the £250 she had paid in respect of utilities she wished the sum of £200 to be set against any amount outstanding to the Applicant. She explained she had come by this figure because she felt that since she was living at the property so rarely during the relevant period that the sum of £50 would cover any use of utilities over the period from March 2020 onwards.

23. She explained in her evidence that she felt she had been treated very poorly, that the situation had been unfair and she felt very stressed out by it. She indicated again that in terms of the payment order requested by the Applicant she was prepared to settle for a sum of £50 which she felt was more than reasonable. This figure she said had been arrived at after deduction of the rent-free month and a deduction of £200 in respect of what she felt was an overpayment in respect of utilities. The Respondent was not cross examined.

24. Only the parties gave evidence to the Tribunal and parties were then invited to make final submissions to the Tribunal. The Applicant stressed in her submission that there had been no overpayment of utilities by the Respondent and that she was responsible for payment of these until the end of the tenancy and that she had failed to pay rent due after the month of August 2020. Ms Day for the Respondent highlighted the agreement for the rent free month and questioned the lack of utility bills throughout the tenancy, saying the Respondent was paying “ blind” and had overpaid. She said that from the Respondent’s perspective the situation was “ morally reprehensible”.

Findings In fact

25. The Applicant and Respondent entered into a private residential tenancy for a self-contained flat at the property on 19 September 2019 and the tenancy ended on 16th November 2020.

26. The monthly rent for the property was £550 payable in advance and a deposit of £650 was paid by the Respondent.

27. On 29 April 2020 the Applicant emailed the Respondent offering a rent-free month at the property for October 2020 if she continued with the tenancy in July and August 2020 and into the next academic year.

28. The Respondent answered this email offer in positive terms thanking the Applicant for the offer and effectively accepting it.

29. These emails in the context in which they were sent amount to an agreement between the parties that rent would not be charged for October 2020 if the Respondent kept the tenancy for July and August 2020 and into the next academic year.

30. In the course of emails between the parties in July 2021 on other matters the Respondent indicated to the Applicant that she loved the flat and hoped to be staying there for the duration of her time at university.

31. The Respondent paid rent for July and August 2020 as required by the tenancy agreement at the beginning of these two months.

32. On 7 August 2020 the Respondent emailed the Applicant indicating that she could no longer offer a discretionary free month in October due to financial losses incurred during the Coronavirus pandemic. These losses were not connected to the Respondent’s tenancy but another tenancy.

33. The offer of the rent free month was withdrawn after it was accepted and after the Respondent had complied with the agreement by paying rent for July and August.

34. In terms of the tenancy agreement gas and electricity used was payable on a monthly basis to the Applicant when requested by her.

35. The Applicant rents out properties at 58 Cecil St in Glasgow comprising the flat occupied by the Respondent which is a two apartment with kitchen and shower room

and is self-contained. The other rooms at the property have a shared kitchen and shower. The property occupied by the Applicant was the biggest of the rented properties at the address.

36. Utilities at the properties were charged by the Applicant according to the usage made by each tenant in occupation.

37. In order to work out individual utility bills the Applicant had regard to the overall total bill for utilities which was calculated with reference to a meter which covered all of the properties. Each of the rented properties had an individual meters installed and the Applicant monitored usage using these meters and billed tenants for their share of the utilities accordingly.

38. At the onset of the Covid 19 pandemic and during the subsequent period of restrictions from March 2020 onwards the Applicant e mailed the Respondent to advise that utilities would be charged at the rate of £50 per month and this would be adjusted up or down when she could physically access the individual meters which she could not do during the period of restrictions.

39. The Respondent made five payments of £50 to to the Applicant for utilities between March and August 2020. During this period she occupied the property for around 10 days only.

40. The Respondent made no payments for rent or use of utilities at the property after August 2020.

41. The breakdown of the utility bills for March to mid November 2020 was based on the meter reading from the meter which covers all the tenanted properties and divided equally between the tenanted properties. This shows a small balance owed by the Respondent which the Applicant is not claiming.

42. The breakdown was not arrived at using the tenanted properties individual meters which the Applicant has not accessed since March 2020.

43. Rent lawfully due at the property is the sum of £111, deducting the sum of £550 for the rent free month agreed by the parties for October 2020 and setting off the sum of £78 in respect of overpaid utilities.

Reasons for Decision

44. There were two issues that the Tribunal required to address in the context of the evidence. The first related to whether the parties had agreed a rent-free month for October 2020 and whether the withdrawal of that offer on 7 August 2020 was a breach of that agreement which would entitle the Respondent to claim for loss sustained as a result of the breach in the sum of one month's rent, effectively a counterclaim in this application. If so this would fall to be deducted from the amount sought in the payment order.

45. The second issue which the Tribunal had accepted could be argued by the Respondent was whether there had been an overpayment in respect of utilities and whether a deduction should be made in respect of any overpayment which could then be set against the amount sought by the Applicant.

46. In relation to the first matter the Tribunal closely examined the evidence presented in the form of emails and the evidence of both parties in relation to their understanding of what had or had not been agreed. The Applicant's position was that her email in which she set out a policy regarding the free month was intimation of something which

might take place later and was not an offer. Her position was that this had not been formally responded to although she conceded that it had been acknowledged in positive terms by the Respondent. She accepted that she had e mailed on August 7th indicating that she could no longer offer the discretionary free month but indicated this was a courtesy and the use of the word “offer” the email was just ‘unfortunate language’. The Respondent’s position in relation to the email sent by the Applicant regarding the rent-free month was that this had been an offer which she believed she had accepted in terms of her positive response to the email and this was reinforced by a later email in July 2020 in which she had expressed her love of the flat and her desire to stay there throughout her time at university.

47. In order to determine whether parties had entered into an agreement for a rent-free month in October the Tribunal took an objective approach looking at the words used by the parties in order to determine whether an agreement which was intended to be binding had been reached. It was clear from the evidence that both parties had the same understanding of what was being discussed in the emails and what was required for the rent free month to be given. The Tribunal was satisfied that the Applicant’s email of 29th April constituted an offer to the Respondent of a rent-free month for October 2020 if she maintained the tenancy in July and August 2020 and into the next academic year. The Respondent responded to this offer quickly in a positive way and expressing her thanks. The Tribunal took the view that this response should be considered as an acceptance of the offer given its positive terms and the context in which the communication was taking place when the Respondent had emailed to ask for a rent reduction. The Tribunal took the view that it was entirely reasonable having regard to these communications and the circumstances in the background for the Respondent to regard the applicant’s email as a firm offer of a rent-free month if she kept the tenancy on in July and August. As the Applicant had raised the issue of the rent free month in the first place, which in her evidence she said was to assist students, the Tribunal took the view that the logical and reasonable interpretation of the exchange was to find that this amounted to an agreement between the parties for a rent free month if the Respondent kept on the tenancy as specified in the email of 29th April.

48. The Tribunal considered whether the Respondent had fulfilled her part of the agreement to maintain the tenancy over the months of July and August and noted that the rent for these months had been paid on time. The Tribunal therefore took the view that whilst actions in performance of the agreement were not part of the consideration as to whether there was an agreement in the first place, by the beginning of August 2020 the Respondent had effectively fulfilled her part of the agreement. The Tribunal’s view was that in rescinding the offer by e mail on 7 August 2020, the Applicant was essentially indicating that she would not perform her part of the agreement and was therefore in breach of it, even although this was before October when the free month was to be given. The Tribunal accepted that the Applicant’s withdrawal of the offer was made for financial reasons which did not relate to the Respondent’s tenancy. While she may have herself suffered losses in respect of another tenancy the Tribunal did not consider it fair or reasonable to try to recoup the losses by withdrawing from the agreement made with the Respondent for a rent-free month.

49. The Tribunal was therefore satisfied on the balance of probabilities that the Respondent had established that a binding agreement for a rent free month had been entered into, and the offer had been withdrawn after acceptance, resulting in a

material breach of the agreement. As a result the Respondent was entitled to claim that the sum of one month's rent be deducted from the sum being requested in the payment order.

50. The second issue which had to be determined by the Tribunal was whether there had been an overpayment by the Respondent of utilities from March 2020 onwards and whether the amount of this overpayment could be determined and should be set against the amount the Applicant was seeking in the payment order.

51. The Tribunal in considering this matter had little evidence upon which to make a determination. Parties were agreed that the sum of £50 in respect of utilities had been paid for five months from March 2020. The sum had been fixed by the Applicant until such time as she could access the property and read the individual meter which she could not physically do during the period of the Covid 19 restrictions. Reference was made at the Hearing to email exchanges between the parties in which the Respondent had asked for clarification as to when the bills would be adjusted up or down when the property could be accessed by the Applicant in order to read the individual meter to confirm usage. The Applicant had not effected such access and as at the time of the Hearing indicated that she had not physically been at the property since March 2020. She produced a breakdown from the bill that she received from the energy suppliers which she then subdivided between the number of tenants. This bill suggested that the sum of £23.16 was owed by the Respondent but this was not being sought by the Applicant in terms of the payment order application. The Applicant accepted that although this breakdown was based on an accurate bill provided for all of the properties, the actual stated share for the Respondent could be less than given on the breakdown if, as the Respondent said, she had occupied the property during the relevant time for around 10 days only.

52. The Tribunal also had evidence from the Respondent who said that her bills had gone from £34 to £50 per month and the Applicant in her evidence did not dispute that the Respondent's bill for utilities for February 2020 had been £34.40. The Tribunal accepted the Respondent's evidence that she had not occupied the property for a substantial period of time during the relevant period and that this would have affected the usage of utilities which meant that the cost would likely be less than was charged. The Tribunal also took into account that the Respondent paid only 5 months' utility charges from March 2020, up until the termination of the tenancy on 16 November 2020.

53. The Tribunal was satisfied on the balance of probabilities that the Respondent had established that there was an overpayment by her for utilities between March and August 2020 at the property.

54. The Tribunal accepted that the breakdown given by the Applicant was accurate insofar as it related to the overall use made by all the tenants within the whole property over the relevant period. The difficulty was that even if that actual bill had been produced it would not assist in knowing the actual usage made by the Respondent during a period when she was only at the property for a short time, as individual usage had not been checked over the period or since. The Tribunal was of the view that on the evidence before it, it could come to a view on what was a reasonable amount in terms of overpaid utilities. There was the evidence which it accepted that during that period the Respondent was for the most part not living at the property and the fact that in February 2020 the actual utility bill for the Respondent was for a sum between £34 and £35. The Tribunal also took into account that for some of the period when the

Respondent was not living at the property these would have been summer months when it is well known and understood that energy use may be less, certainly as far as heating is concerned. As against that there was no evidence put before the Tribunal hearing as to the amount of the standing charge that each tenant had to pay and the likely level of any residual energy use even if a property was unoccupied. Further the Respondent accepted that she had not paid utilities for the months of September, October and up to the end of the tenancy on 16th November which was she was obliged to pay in terms of the tenancy agreement.

55. Given the lack of evidence around this issue the Tribunal did not feel that there was evidence to support that an overpayment of £200 had been made. Taking into account all the factors mentioned above it seemed appropriate to assess the overpayment level by considering these factors and the sum paid by the Respondent over the five month period from March to August 2020 along with the monthly bill which was paid in February 2020 which reflected the Respondent's actual use at the property, albeit when the Respondent was residing at the property. The Tribunal therefore felt it was reasonable to deduct the sum of £15.60 from each of the five months during which £50 was paid by the Respondent to reflect the monthly charge of £34.40 that was paid for utilities in February 2020. This amounts to a total deduction from the sum paid for utilities of £78.

56. Whilst the Tribunal is aware that this may not reflect the actual utility use by the Respondent during the relevant period, this may never be known, as the individual meter reading was not taken to reflect the Respondent's usage, either during the relevant 5 month period or when the tenancy agreement ended and has not been taken since that date. The Tribunal's view was that its approach here was reasonable given the evidence it had to consider and was of the view that to take any other approach would be speculative and not based on the evidence.

57. The Tribunal found that in terms of the payment order requested in the sum of £739 the sums of £550 and £78 fall to be deducted to take account of the loss of the agreed rent free month and the assessment of the overpayment of utilities at the property.

58. The Tribunal therefore makes a payment order in the sum of £111.00 in favour of the Applicant and against the Respondent.

Decision

The Tribunal determined that a payment order in the sum of one hundred and eleven pounds only (£111.00) be granted in favour of the Applicant and against the Respondent.

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.

V.B.

Legal Member/Chair

28.6.21
Date