



**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("the 2016 Act")**

**Chamber Ref: FTS/HPC/CV/21/0890**

**Re: Property at 12 Mayfield Grove, Dundee, DD4 7GZ ("the Property")**

**Parties:**

**Mr Iqbal Hussain, 152 Craigcrook Road, Edinburgh, EH4 3PP ("the Applicant")**

**Mr Abdul Spingher, 0/1, 2 Buccleuch Street, Glasgow, G3 6SL ("the Respondent")**

**Tribunal Members:**

**Yvonne McKenna (Legal Member) and Ann Moore (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order for payment in the sum of £8,000 be granted together with interest at the rate of 8% per annum from the due date, 13 July 2021, until payment.**

**Background**

1. This is an application for a payment order, contained within papers lodged with the Tribunal on 9<sup>th</sup> April 2021, in terms of Rule 111 of the First tier for Scotland Housing and Property Chamber Rules of Procedure ("the 2017 Rules"). The application is lodged by the Applicant's Representative Mr Andrew Taylor, Murray Beith Murray solicitors.

2. In the Application , the Applicant seeks payment of arrears in rental payment of £5000 along with interest at the judicial rate of 8 % , in relation to the Property, from the Respondent, and provided along with the application a copy of the parties' Private Residential Tenancy Agreement ("PRT"), copy rent statement showing rent payments and non-payments from January 2020 to April 2021 , and a copy letter from the Applicant's Representative to the Respondent regarding the sums due dated 18<sup>th</sup> March 2021.

3. The Respondent had been validly served by Sheriff Officers with the Notification, Application papers and Guidance Notes from the Tribunal on 5<sup>th</sup> May 2021, and the Tribunal was provided with the Certificate of Intimation.

4. The Respondent on 24<sup>th</sup> May 2021 intimated to the Tribunal that he was instructing Apex Services to act as his Representative.

5. On 25<sup>th</sup> May 2021 (and not 25<sup>th</sup> June 2021 as stated) the Representative for the Respondent lodged written representations on his behalf with the Tribunal.

6. Both parties were advised that a Case Management Discussion (CMD) would take place by teleconference on 2<sup>nd</sup> June 2021 at 11.30am and that they were required to participate.

### **The Case Management Discussion (CMD)**

7. The application called for a CMD at 11.30am on 2<sup>nd</sup> June 2021 by teleconference. The Applicant was not present and was represented by Mr Andrew Taylor. The Respondent was present and was represented by Mr Saqib Deen of Apex Services.

8. The Tribunal explained the purpose of a CMD in terms of Rule 17 of the 2017 Rules.

9. At the CMD the issues had been identified as whether or not the Respondent had notified the Applicant of necessary repairs and that he was withholding the rent until these repairs had been rectified.

10. It was accepted by the Respondent that at the date of the CMD that rent outstanding amounted to £5,000.

11. In view of the dispute between the parties the case was continued to a Hearing on 13 July 2021 for evidence to be led. Parties were given oral notification of the Hearing date at the conclusion of the CMD. This was also contained in the CMD Notes issued to parties.

12. Directions were issued to parties following the CMD.

### **Directions Issued to Parties**

**13. The Applicant is required to lodge with the Tribunal at least 14 days in advance of the Hearing date; -**

(i) a list of witnesses the Applicant proposes to call to give evidence.

**14. The Respondent is required to lodge at least 14 days in advance of the Hearing date; -**

(i) a list of witnesses the Respondent proposes to call to give evidence

(ii) the text messages exchanged between the parties where it is brought to the Applicant's attention that there are repairs outstanding and that rent is being withheld, therefore.

(iii) a full list of all outstanding repairs and verification of all costs incurred by the Respondent in repairing/ replacing items himself

(iv) proof that the rent has been set aside for payment after outstanding issues have been resolved.

15. The Applicant complied with the Directions. The Respondent did not comply with the Directions.

### **The Hearing 13 July 2021**

16. The Applicant was represented by his solicitor Mr Andrew Taylor. The Respondent did not attend and was not represented.

17. On 2<sup>nd</sup> July 2021 the Applicant lodged with the Tribunal an application under Rule 13 of the 2017 Rules to amend the sum sued for to £8,000 on the basis that no rent was paid over the months of May, June and July 2021.

18. This was crossed over to the Respondent and no objection had been received by the Tribunal.

19. The Tribunal allowed the application to increase the sum sued for.

20. Mr Taylor indicated at the outset that given the Respondent had not provided the Tribunal with any information pertaining to the withheld rent and was not engaging with the Tribunal process that he intended to deal with the Hearing by providing the Tribunal with submissions and did not intend to lead the Applicant and his two witnesses in evidence.

21. After a brief adjournment the Tribunal agreed this was a reasonable basis to proceed in the circumstances.

22. The Tribunal requested an updated rent statement.

23. Following a further brief adjournment the updated rent statement was produced showing the rent outstanding as at today's date being £8,000.

24. Mr Taylor invited the Tribunal to grant the order for payment. He said that the Lease provided for rent to be paid at the rate of £1,000 per calendar month and that there were 8 months of unpaid rent due. Whilst representations had been made that the rent was withheld this had not been insisted upon by the Respondent who was not engaging with the Tribunal process and was absent today. The position that rent was being withheld due to outstanding repairs had always been denied by the Applicant. He sought an order for payment including interest at 8% per annum from the due date until payment.

25. Mr Taylor also invited the Tribunal to grant expenses against the Respondent. This was on the basis that the Respondent had turned up at the CMD stating the application was being defended and had not insisted on the defence and had not engaged with the Tribunal since the CMD.

### **Findings in Fact.**

26. After considering the submissions and the evidence before the Tribunal, the Tribunal made the following Findings in Fact

27. The Parties entered into a PRT with effect from 1 January 2018.

28. The monthly rent was £1,000.

29. As at the date of the Hearing the amount of rent arrears were £8,000.

30. The Respondent did not notify the Applicant of any repairs or issues with the Property or that he intended to withhold the rent.

### **Reasons for Decision**

31. The Tribunal accepted the Applicant's position as delivered by his Representative that he had not been notified of any necessary repairs or issues or that the rent was being withheld.

32. Even though Directions had been issued specifically requesting that evidence of the withheld rent notice be provided by the Respondent he had failed to do so. Furthermore, he had not advised the Tribunal of his witnesses or turned up at the Hearing to provide the Tribunal with oral evidence regarding his position. Having considered the written representation of the Respondent the Tribunal did not accept that the Respondent had notified the Applicant and had withheld rent. No proof of notification or of the existence of the withheld rent in an account with his wife was produced. There was accordingly no evidence before the Tribunal on the issue of withheld rent and accordingly the Tribunal rejects this position.

33. The Tribunal accordingly found that the arrears were due for payment and there was no defence.

34. The Tribunal granted the order sought.

35. Regarding the request for expenses the Tribunal had regard to Rule 40 of the 2017 Rules. The Tribunal do not consider that the Respondent's conduct in these proceedings i.e., stating a defence in written representations and turning up at a CMD insisting on that position and then not engaging further amounts to unreasonable behaviour and accordingly the request for expenses is refused.

36. The decision of the Tribunal is unanimous.

### **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.**

# Y McKenna

**Legal Member/Chair; Yvonne McKenna**

**Date 13 July 2021**