Housing and Property Chamber
First-tier Tribunal for Scotland

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 and Rule 70 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Procedure Rules.")

Chamber Ref: FTS/HPC/CV/21/1385

Re: Property at 31 Ashkirk Place, Dundee, DD4 0TN ("the Property")

Parties:

Mr Ping Xu, 20 Panmure Court, West Victoria Dock Road, Dundee, DD1 3BH ("the Applicant")

The Property Management Company, 19 Castle Street, Tayport, DD6 9AE ("The Applicant's Representative")

Ms Eva Krejci, sometime residing at 31 Ashkirk Place, Dundee, DD4 0TN ("the Respondent")

Dundee Law Centre, 163 Albert Street, Dundee, DD4 6PX ("the Respondent' Representative")

Tribunal Member:

Martin McAllister (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent for payment of the undernoted sum to the Applicant:

One Hundred and Forty Three Pounds twenty five pence (£143.25)

Background

1. **On 9TH June 2021 the Applicant submitted an application to the First-tier Tribunal for Scotland seeking payment of the sum of £600 in respect of rent arrears.**

2. **A case management discussion was held on 4th August 2021.**

3. **On 20th July 2021, the Respondent's representative had submitted an application for a Time to Pay Direction under the Debtors (Scotland) Act 1987. The application intimated that the Respondent admitted the debt and was seeking to repay by instalments of £10 per month.**

4. **On 28th July 2021, the Applicant's representative intimated that the offer of instalments was unacceptable because the application had not demonstrated that the Respondent could not afford more than the instalments offered and that it would take too long for the debt to be repaid.**

5. **On 4th August 2021, the tribunal was advised that the tenancy had come to an end on 3rd August 2021 and both parties accepted that the level of arrears of rent at that date was £705.62.**

6. **Both parties agreed that the case management discussion should be continued to allow crystallisation of the sum due and for exploration of a possible settlement. Parties intimated that it was hoped that matters could be resolved and the case management was adjourned to 14th September 2021.**

The Case Management Discussion on 14th September 2021

7. **Neither the Applicant or Respondent participated in the audio conference. The Applicant was represented by Mr David Wilkie. There was no representation for the Respondent. It was noted that the date for the case management discussion had been arranged on 4th August 2021 when both representatives had been present.**

8. **Mr Wilkie said that he had been corresponding with the Respondent's agent and that there was a difference of opinion between them with regard to the recoverability of costs incurred to carry out an eviction. He explained that there had been a decree of eviction in respect of the property and that the Respondent had not returned the keys and, as a consequence, sheriff officers and a locksmith required to be involved. He said that the costs amounted to £366.85 and that the level of rent arrears was £643.25 rather than £705.82.**

9. **Mr Wilkie said that the Property had been left in very good order by the Respondent and that the whole deposit would be available to be applied to the costs and rent arrears. He said that he was seeking an order in respect of the rent arrears alone.**

10. **The tribunal determined the application and made a payment order for £643.25.**

Review

11. **The Applicant's representative submitted an application under Rule 30 of the Procedure Rules requesting that the Decision of 14th September 2021 be reviewed.**

12. **The Application for Review was granted on 29th September 2021 and the case was remitted to another case management discussion.**

The Case Management Discussion on 13th January 2022

13. **Neither the Applicant nor the Respondent appeared. The Applicant was represented by Mr David Wilkie and the Respondent by Ms Rebecca Menzies.**

14. **The purpose of a case management discussion was explained to parties together with a reminder of the procedural history.**

15. **On 14th October 2021, the Respondent's Representative wrote to the Applicant's Representative and stated, inter alia, that it was intending to seek an additional payment of £120 in reimbursement of the costs charged to the Applicant for his representative to attend the additional case management discussion as a consequence of the Decision of 14th September 2021 being reviewed and the matter being referred to a case management discussion. A copy of the letter had been sent to the Tribunal.**

16. **Mr Wilkie explained that the payment order he was seeking was £510.10. He said that, at the previous case management discussion, his client had been granted a payment order for £643.25 but that, since then, his client had been successful in obtaining return of the tenancy deposit of £500. He said that the sum of £78.17 had been deducted for costs for a locksmith and £288.68 for sheriff officer costs leaving a balance of £133.15 which had been applied to the arrears.**

17. **Mr Wilkie said that he was seeking an additional payment of £120 in respect of the additional costs incurred by his clients because of the additional Tribunal procedure.**

18. Mr Wilkie said that he was seeking an award of interest in respect of the sum outstanding and that this was because of the length of time that the rent has been outstanding.

19. Mr Wilkie said that a decree of eviction had been granted by the Tribunal but that the Respondent had made no contact with the Applicant or his representative to indicate that she was leaving the Property and had not returned a set of keys. He said that, as a consequence, sheriff officers and a locksmith had been employed to gain access.

20. Mr Wilkie said that it would have been wrong, in circumstances where it was not known if the Respondent had removed herself from the Property, for the Applicant or his agents to take access to the Property without using the services of sheriff officers.

21. Mr Wilkie said that the requirement for sheriff officers and a locksmith would have been obviated had the Respondent intimated that the Property had been vacated.

22. Mr Wilkie said that it was appropriate for the Respondent to pay the sheriff officer and locksmith costs and, consequently, it was appropriate for them to be taken from the tenancy deposit which had been recovered.

23. Mr Wilkie said that he had made application to the tenancy deposit scheme and had set out what costs he wanted to apply to it: the sheriff officer and locksmith costs and some rent arrears. He said that Safe Deposit Scotland would have contacted the Respondent to give her an opportunity to make representations and that at the start of the tenancy she had been given details of the tenancy deposit scheme and would have been able to make contact herself. He said that here representative would also have been aware that application for the deposit was being made.

24. Ms Menzies stated that this was a "no fault eviction" and that any costs should be borne by the Applicant.

25. Ms Menzies said that her client had left the keys within the Property and that the Applicant had keys which he could have used to access it. She said that these keys had been previously used to allow access for contractors.

26. Ms Menzies said that she had asked her client about contact from Safe Deposit Scotland and that, in relation to any contact, had been told that there hadn't been any "that she is aware of." She said that her client "didn't recall receiving an email" from the tenancy deposit scheme. She said that her client had made no approach to the tenancy deposit scheme because she was content that all the deposit be applied to rent arrears.

27. Ms Menzies suggested that her client made no contact with the Applicant's agents when the Property had been vacated because the

relationship had broken down. Mr Wilkie did not accept this. He said that there had been no deterioration in the relationship with the Respondent and he said that a simple call and return of the keys could have avoided costs being incurred. He disclosed that he had the telephone number of the Respondent.

Findings in Fact

28.

28.1 The parties entered into a short assured tenancy agreement in respect of the Property on 8th February 2011.
28.2 The tenancy terminated on 3rd August 2021.
28.3 There are rent arrears due amounting to £143.25.
28.4 The Applicant has recovered the tenancy deposit of £500 and applied part of it in paying costs for a locksmith of £78.17 and sheriff officer costs of £288.68.

Reasons

29. The tribunal saw no reason for a Hearing. The matter at dispute was focused and both parties agreed that they had no evidence to lead and no further submissions to make.

30. The tribunal accepted the terms of the short assured tenancy agreement which had been lodged. The Respondent had made no representations that she was not subject to it.

31. At the case management discussion on 4th August 2021, parties agreed that the tenancy had terminated on 3rd August 2021.

32. A statement of rent had been lodged showing arrears of £643.25. The Respondent's Representative did not dispute that there were rent arrears and did not dispute the gross figure of £643.25 but did dispute that, in calculating the net sum of arrears of £510.10, the Applicant should have applied part of the recovered tenancy deposit to the locksmith and sheriff officer costs. Ms Menzies was clear in stating that the whole deposit of £500 should have been applied to the arrears and that the Respondent should not be liable for costs amounting to £366.85 which had been incurred by the Applicant

33. The tribunal considered that the Respondent had an opportunity to make representations to the tenancy deposit scheme with regard to the costs being applied to the deposit although it did have some sympathy with the argument put by Ms Menzies that the Respondent had wanted the whole deposit to be applied to the arrears and that this may have influenced her

decision not to make representations. Nevertheless, the Respondent chose not to make representations to the scheme and it was not certain from what Ms Menzies said that she had not received a communication from the tenancy deposit scheme but rather that she had no recollection.

34. It was not for the tribunal to speculate if there would have been any change to the way the tenancy deposit scheme handled the deposit if representations had been made by the Respondent. It may have taken the view that the costs were directly attributable to the tenancy. It may also have taken the view that the matter was irrelevant to it because the arrears of rent (which the Respondent has not disputed) was in excess of the deposit and that, as a consequence, the whole of the deposit fell to be paid over to the Applicant.

35. The tribunal considered that any decision taken by the tenancy deposit scheme was irrelevant to its deliberations other than the fact that the sum of £500 had been recovered by the Applicant.

36. The tribunal considered whether or not it was reasonable that the locksmith and sheriff officer costs (hereinafter referred to as "eviction costs") should be paid by the Respondent and whether or not it was reasonable for the Applicant to apply some of the recovered deposit to costs which he had incurred.

37. In some cases, a tenancy agreement may provide for such costs as the eviction costs to be recoverable from any funds belonging to a tenant which were held by a landlord but the short assured tenancy agreement in respect of the Property had no such provisions. There was therefore no contractual obligation to pay the eviction costs.

38. The tribunal was not inclined to accept that, as a matter of principle, in a "no fault eviction," any eviction costs would be automatically borne by a landlord. In this case the Applicant was intending to sell the Property and obtained a decree of eviction on that basis. The Respondent would be aware of this. It seemed to the tribunal that a landlord, in possession of a decree of eviction might reasonably take the view that it would be unwise to assume that it was in order to take possession of a property "informally" and without use of sheriff officers where it was not known if the tenant had removed herself. It might be considered reasonable for the Respondent to have made some contact with the Applicant's Representative to liaise with him with regard to arrangements for return of the keys. It was noted, however, that the short assured tenancy agreement was silent on any arrangements for return of keys at the termination of the tenancy. Mr Wilkie advised that he had the Respondent's telephone number and that there had not been a poor relationship between them. Mr Wilkie did not indicate that he had attempted to contact her. A landlord, in such circumstances has a duty to mitigate her/ his loss and it was considered that the Applicant could have

taken steps to ascertain the Respondent's position at the termination of the tenancy.

39. The issue for the tribunal was whether or not such eviction costs were recoverable by the Applicant by applying funds from the deposit to them. It did not consider it relevant what decision the tenancy deposit company took because the level of arrears was such that the whole deposit would fall due to be paid to the Applicant.

40. There was no order of the Tribunal in favour of the Applicant in respect of the eviction costs.

41. It was open to any landlord to submit an application to the Tribunal for an order of payment in respect of an sums she/he considers to be due.

42. The tribunal did not accept that the eviction costs were appropriately recovered by the Applicant from any of the Respondent's funds held by him or his agents. It determined that an order of payment in respect of £510.10 should not be made.

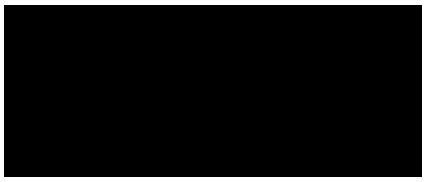
43. The parties agreed that the gross level of arrears was £643.25. If the retrieved tenancy deposit were applied to that sum, the balance is £143.25 and the tribunal considered it appropriate that an order for payment in that sum should be made.

44. The Respondent exercised her right to request the Tribunal to review a decision which it had made and she was successful in that application. The tribunal did not consider it appropriate for it to exercise its discretion in making an award in respect of any additional fees incurred by the Applicant as a result of further procedure being engaged as a consequence of another case management discussion being fixed as a result of the Decision being reviewed.

45. Rule 41A of the Procedure Rules allows an award of interest to be made. Such an award would be an exercise of discretion by the tribunal and it determined not to exercise it. Part of Mr Wilkie's argument on interest appears to be that the matter has gone on for some time but, in terms of Rule 41A (2) of the Procedure Rules, interest would run from the date of any decision. The tribunal noted that the tenancy agreement was silent on the matter of interest in the event of rent not being paid.

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.



Martin J. McAllister
Legal Member of the First-tier Tribunal.
12th January 2022