



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/21/1514

Re: Property at Flat 1/1, 49 Derby Street, Glasgow, G3 7TU (“the Property”)

Parties:

Miss Kirstin Macdonald, 7 Magdala Mews, Edinburgh, EH12 5BX (“the Applicant”)

Mr William Olayide, Flat 1/1, 49 Derby Street, Glasgow, G3 7TU (“the Respondent”)

Tribunal Members:

Jan Todd (Legal Member) and Gerard Darroch (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment should be granted in favour of the Applicant by the Respondent in the sum of £9,963.88

- **Background**

- (a) This was the a hearing set down to consider the application made by the Applicant Ms Kirstin MacDonald under Rule 111 of the Tribunal rules for an order for payment of rent arrears from the tenant Mr William Olayide the Respondent.
- (b) The note of the previous two CMDs are referred to for their terms. After the first CMD on 1st September 2021 the Respondent was given time to obtain legal representation; to lodge an application for a time to pay order if he thought that was appropriate and for him to provide evidence of further payments he alleges he has made. In addition the Applicant wished to increase the sum claimed.
- (c) The Applicant did lodge a fresh Rent statement and requested to increase the sum claimed to £10850, this amount included interest of £600.

- (d) The Respondent did not respond to the Direction but did respond to that by e-mail dated 6th September 2021 claiming that the “amount is overstated and saying he thought the sum due was £10,050.
- (e) At the second CMD on 14th October the legal member questioned the interest calculation and the Applicant’s representative. Ms Munro on checking the rent statement agreed that it appears to have been a mistaken calculation as the interest chargeable in the lease was 8% per annum. She undertook to prepare a revised statement with the correct interest calculation and also advised that the Respondent has now left the Property as of this week on 11th October and there would be a final rent due for the period to the end of the tenancy.
- (f) it was then agreed as the Respondent was absent but challenging the amount due that it was fair and appropriate to continue the matter to another date to allow a final rent statement to be lodged by the Applicant with a request to increase the sum due to include the final rent due up to 11th October, to correct the amount of interest claimed, and also to allow the Respondent to make representations regarding the amount due and any offer of time to pay. The matter was then remitted to a hearing on 15th November 2021 at 2pm.
- (g) Prior to the hearing the Applicants agent lodged a fresh rent statement showing a total sum due to 11th October 2021 together with a revised calculation of interest of £11,413.88. This represents the rent due of £1250 per month not paid from December 2020 to 11th October with a credit of two payments of £500 only by the Respondent on 15th March 2021 and 9th July 2021. The Applicant’s agent also confirmed that “given the circumstances and the complication of calculating interest until the funds are paid in full, we have capped the interest owed using today’s date at £424.15. This means the total amount owed by the tenant is £11,413.88. No more will be applied.”

The hearing on 15th November 2021 at 2pm

1. The Hearing took place at 2pm on 15th November 2021 by teleconference call and the Applicant’s representative Catherine McNab from Western Lettings was in attendance as was the Respondent who was not represented.
2. The Tribunal noted that shortly before the hearing commenced a fresh rent statement was lodged from Western Lettings showing the sum of £1,450 being the deposit claimed from Safe Deposits Scotland and deducted from the previous total of rent arrears leaving a revised sum of £9,963.88. The covering e-mail from the letting agent confirming that they had received the tenant’s deposit back and this was the new sum owed.
3. The legal member made introductions and as a preliminary matter asked the Respondent if he had received this latest statement. He advised that he had not yet read it but did agree that the previous rent arrears amount was correct and agreed that he had agreed the deposit should be released to the Applicant.
4. The Applicant’s representative Ms McNab confirmed that she was seeking an order for payment today for the rent arrears accrued by the Respondent while he was a tenant in the Property. Both parties agreed the Respondent had been a tenant in the Property from June 2020 to 11th October 2021 when he left the Property.
5. The Respondent agreed he owed rent and agreed with the new sum claimed of £9,963.88 which reflects the deduction of the deposit of £1450. In light of the Respondent agreeing the sum due the legal member asked if he was in a

position to submit a time to pay application which he was given time to do after the previous CMDs. He explained that he has just offered a monthly payment to another creditor namely a previous landlord and is waiting to hear back from them. He indicated that until he hears back he was not able to fill in the time to pay application form this afternoon.

6. After a very short break Ms McNab advised she would like to seek an order for payment of the full sum as the Respondent was not able to make an offer to pay in instalments today. The Respondent indicated that he would prefer if he could be granted another continuation to allow him to establish his outgoings and lodge the time to pay application form.

Facts Agreed

7. The Applicant and Respondent are landlord and tenant in the above Property by virtue of a tenancy agreement dated 19th and 22nd June 2020 and which commenced on 23rd June 2020.
8. The Rent due was £1250 per month payable on 23rd of each month.
9. Interest may be charged at the rate of 8% per annum by the landlord from the date on which rent is due until payment
10. The landlord has applied interest from December 2020 but confirmed that it was now capped.
11. The Respondent left the Property on 11th October 2021
12. The arrears due by the Respondent to the Applicant as at 11th October 2021 are £9,963.88 including interest.
13. The Respondent admits the sums are due.
14. The Deposit of £1450 has been reclaimed by the Applicant and has been put towards the rent arrears

Reasons for Decision

1. The Applicant has entered into a Private Residential Tenancy with the Respondent whereby he leased the Property and agreed to pay the monthly rent due of £1250.
2. From the written rent statements lodged and admitted by the Respondent he has not paid rent in full since 23rd December 2021. The sum due after the deposit which has been successfully claimed by the Applicant is £9963.88. This is the sum claimed today by the Applicant's representative and admitted to by the Respondent. It includes a sum of interest calculated at 8% in accordance with the terms of the lease.
3. The Respondent had indicated prior to this hearing and at the hearing that he would like to make an offer to pay in instalments. However he indicated he was not in a position to submit the application for time to pay today as he was still negotiating with another creditor and waiting to hear from them before he could assess what he could offer to pay for this debt. The Applicant's representative advised that they had hoped to receive an offer but in the absence of that she wished a full order for the amount outstanding today to be made.
4. The Tribunal adjourned to consider their decision and unanimously agreed it was fair and appropriate to make the order today for the full sum sought as

the Respondent had been given 2 previous opportunities to complete a time to pay application and had failed to do so. The application had been raised on 18th June this was now 5 months later and it was not fair to delay this case any longer.

5. The Tribunal noted that the Respondent is able to make an informal offer to the Applicant if he so wishes to pay by instalments and if not successful and the order is served on him he can make an application for time to pay in terms of rule 41 of the Tribunal's rules and if he wishes to do so he will find information on the Tribunal's website regarding this or can seek legal advice from a solicitor or other agency such as Shelter or Citizen's advice Bureau. The Respondent should note that if he makes such an application it should be served also on the Applicant.
6. The Tribunal having accepted the submissions and written evidence from the Applicant and noting the acceptance of the Respondent that he owes rent to the amount of £9,963.88 up to 11th October 2021 when he left the Property and given there is no time to pay application to consider grants an order for that amount.

- **Decision**

An order for payment of the sum of £9,963.88 is 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.

Legal Member: Jan Todd

Date: 15th November 2021

