



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 16 of the Housing Scotland
Act 2014**

Chamber Ref: FTS/HPC/CV/21/2926

Re: Property at 15/9 Breadalbane Street, Edinburgh, EH6 5JJ (“the Property”)

Parties:

**Mr James O'Hara, Flat 2, Sailmakers House, 136 Narrow Street, London, E14 8DP
 (“the Applicant”)**

Mr Carl Henderson, Address Unknown, Address Unknown (“the Respondent”)

Tribunal Members:

Jan Todd (Legal 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 by the Respondent to the
Applicant for £7,320 be made.**

Background

1. This was the second Case Management Discussion in respect of an application by the Applicant dated 19th November 2021 for an order for payment of rent arrears originally in the sum of £3,780 against the Respondent.
2. The following documents were lodged with the application:-
 1. Tenancy Agreement dated July 2015
 2. Tenancy Statement dated 19th November 2021
 3. Excel spreadsheet of payments
3. On 12th January 2022 the Applicant lodged a further tenancy statement showing the rent arrears had now increased to £5,260.
4. The first CMD took place on 15th February 2022 and the Applicant did not attend but was represented by Ms Iwona Wolinska from Retties letting agent. The

Respondent was not present or represented but the Tribunal had sight of notification that he had been served the papers and intimation of the date and time of this CMD by sheriff officer on 12th January 2022, so proceeded in his absence.

5. Ms Wolinska advised at the first CMD
 - a. that the rent arrears had started to accrue from April 2020 and as the tenant had advised he was having issues due to the pandemic the Applicant agreed to allow a rent holiday of 3 months but that he made it clear to the tenant that this was only a holiday and not a waiver of the rent which he expected to be repaid in full.
 - b. That there have been no further payments and the sum due in the statement she lodged is £5,260. Ms Wolinska advised the tenancy began in 2012 although the tenancy agreement lodged with the application is dated July 2015 she advised that is the latest copy and advised the rent due each month is £740.
 - c. That there were 2 tenants initially as per the lease but Mr Kevin Drummond the second tenant is no longer living there having left the tenancy around February 2021. She advised the Respondent agreed to be responsible for the arrears and is the sole person being pursued for them.
2. However after the legal member went through the rent statement there appeared to be several debits and credits that did not have an explanation and the amount due was not clear as the running balance was not clear.
3. Ms Wolinska also advised that the Respondent had handed back the keys to the Property the day before namely on 14th February and so there would be a final adjustment due to the amount owed and the Applicant she advised would wish to amend the sum sought.
4. The Tribunal advised it wished to see a clearer rent statement brought up to date, an explanation for the credits appearing which were then cancelled, any correspondence between the parties agreeing that the rental holiday for the months of April, May and June 2020 were a holiday and not an agreement that the rent would be waived or reduced and details of any deposit made and reclaimed.
5. In addition the Tribunal advised that as the Respondent had left the property the Tribunal would require a forwarding address to allow further intimation of the CMD note and future date and time of the next CMD to be made on the Respondent failing which the Applicant was advised he could apply for service by advertisement.
6. On 14th March 2022 Ms Wolinska provided a further clearer rent statement and a request to increase the sum sought to £8,220; details of the deposit; bank details showing the misallocated rent in the first statement was not made by the Respondent; copy e-mails confirming the Respondent accepts sole responsibility for the rent payments and e-mails confirming the Landlord would allow a rent holiday for 3 months but did expect to get paid for these 3 months later. She also lodged an application for service by advertisement, with details of evidence of sheriff officers failing to trace the Respondent.
7. A new CMD was scheduled for 13th June 2022 at 10am and intimation was made on the Applicant's representative and the Respondent by service by advertisement.

8. On 26th May 2022 Ms Wolinska wrote again attaching a further updated rent statement showing the final amount of arrears with the deposit deducted and clarifying another error in the original statement lodged with the application. She confirmed final amount due and claimed is £7,320.

Discussion on 13th June 2022

1. The CMD proceeded today at 10.10pm by way of teleconference. The Convener made introductions, and explained how the CMD would be conducted over the teleconference.
2. The Applicant did not attend but was represented once again by Ms Iwona Wolinska from Retties letting agent. The Respondent was not present or represented but the Tribunal had sight of notification that he had been served the papers and intimation of the date and time of this CMD by service of advertisement and so the Tribunal was satisfied it could proceed fairly in his absence.
3. Ms Wolinska confirmed that she was seeking an order today for the sum of £7,320 in respect of rent arrears accrued by the Respondent as the tenant in the Property on behalf of the landlord the Applicant.
4. She confirmed that the tenant started on 2nd October 2015, the rent due was £740 per month and as per the first CMD that the second tenant had left around February 2021 leaving the Respondent liable for the rent.
5. She confirmed that the last rent statement lodged was correct and the sum finally due was £7,320 after deduction of the deposit received from the tenancy deposit company of £900. She also confirmed that neither she nor the Applicant has heard from the Respondent and they are not aware of his current whereabouts. Finally she confirmed the Respondent gave no notice he was leaving on 14th February and so the full month's rent was due for February 2022.

Findings in Fact

1. The Applicant entered into a lease of the Property with Mr Kevin Drummond (second tenant) and the Respondent which commenced on 2nd October 2015.
2. The Rent due in terms of the lease is £740 per calendar month payable in advance.
3. Mr Kevin Drummond left the Property in 2021 and the Applicant is claiming the rent arrears from the Respondent only.
4. The Respondent had left the property on 14th February 2022 and did not give notice.
5. The rent outstanding as at 14th February 2022 is £8,220
6. The Deposit of £900 has been reclaimed by the Applicant and applied to reduce the arrears of rent to £7,320

• Reasons for Decision

7. The parties have entered into a lease where the Respondent initially leased the Property from the Applicant with another party and has agreed to pay

£740 per month in rent. He has latterly stayed in it as the sole tenant. Liability was joint and several in terms of the lease and the Respondent has stated in an e-mail dated 18th April 2021 that “monthly rent will be paid going forward in full....I can confirm the outstanding bill will be paid by myself”.

8.

The Respondent has failed to pay the full rent due. The Respondent fell into arrears from 2nd April 2020. The Rent statement shows the following payments were not made namely rent due on 2nd April, 2nd May and 2nd August 2020, reduced payment on 17th March 2021 of £370, reduced payment of £600 on 28th April and overpayment on 12th May of £800, no payment for 2nd June 2021 and 2nd August 2021, reduced payment of £370 for September 2021 and no payments for 2nd October, November, December 2021 and January and February 2022.

9. The last rent due was on 2nd February 2022 and as the tenant did not give notice the Applicant is claiming that full month's payment. The rent due and owing to 14th February is £8,220. The deposit of £900 has been reclaimed and put towards the rent arrears leaving a sum due of £7,320. This is more than the sum originally claimed in the application but the Applicant timeously intimated his request to increase the sum sought to £8,220 on 14th March and as this sum is less than that intimated the Tribunal finds that the Applicant has successfully intimated a request to increase the sum due.

10. The Respondent was served notice of this application by service by advertisement. The notice was posted from 6th May 2022 to 13th June 2022 and the Respondent has not made any written representations or attended this CMD.

11. The Tribunal accepts the written evidence and verbal statements made by the Applicant's representative who the Tribunal found clear and credible in her evidence that rent is outstanding and remains unpaid. In the absence of any representations from the Respondent the Tribunal finds it fair and appropriate to make an order for payment for the amended sum today. There being no application for time to pay the Tribunal makes an order for payment of the sum claimed.

- **Decision**

An order for payment of the sum of £7,320 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.

Jan Todd

Legal Member/Chair

13th June 2022

Date