



**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/22/1058

**Re: Property at 20 Backdean Road, Danderhall, Edinburgh, Midlothian, EH22 1RE
("the Property")**

Parties:

**Mr Gary Stewart, 20 Backdean Road, Danderhall, Edinburgh, Midlothian, EH22
1RE ("the Applicant")**

**Miss Rosie Westgarth, Amie Mary Westgarth, 22 Backdean Road, Danderhall,
Edinburgh, Midlothian, EH22 1RE ("the Respondent")**

Tribunal Members:

Valerie Bremner (Legal Member)

Decision (in absence of the Respondents)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the
Tribunal") determined that a payment order be made in the sum of Two
Thousand One Hundred and Seventy - Five Pounds Only (£2175.00) in favour of
the Applicant and against both Respondents.**

Background

1. This application for a payment order in terms of Rule 111 was first lodged with the Tribunal on 8th April 2022 and accepted by the Tribunal on 13th June 2022. A case management discussion was fixed for 22nd August 2022 but was postponed at the request of the second Respondent. A further case management discussion was fixed for 14th October 2022 at 10am.

Case Management Discussion

2. The Applicant attended the case management discussion on 14th October 2022 and represented himself. There was no appearance by or on behalf of the Respondents and the date of the case management discussion had been intimated to them by post. The Tribunal had received an email from the Second Respondent sent at 20.47pm the evening of 13th October which had not been seen until the morning of 14th October, shortly before the case management discussion was due to commence. In this email the Second Respondent indicated that she was trying to resolve matters and had an appointment with the CAB cancelled and asked what the Tribunal recommended she do. The email did not ask for a postponement but referred to the Second Respondent's health which was described as being "not the best" at the moment. The email contained no other information regarding the second Respondent's position on the application.

3. The Tribunal Legal member had sight of the email and advised the Applicant of the email at the case management discussion and raised the question of whether the case management discussion should be postponed in the light of the email. The Applicant wished to proceed and indicated that he had received no contact at any time from either Respondent to attempt to resolve matters and he had made the application some time ago and wished the matter to be dealt with as he felt it was hanging over him.

4. The Tribunal considered the overriding objective to deal with proceedings justly. There had already been a request to postpone a previous case management discussion from the second Respondent which had been granted. The email sent in the evening on 13th October did not request a postponement and was seen shortly before the case management discussion started. The Applicant had received no contact from either Respondent seeking to resolve matters and although the Second Respondent had been seeking advice from an advice agency which she said she had not received, she had not attended the conference call to request further time or state her position on the application. In these circumstances and given the position of the Applicant the Tribunal legal member decided that the case management discussion should go ahead in the absence of the Respondents who clearly knew of it taking place.

5. The Tribunal had sight of the application, a tenancy agreement, rent statements, bank statements, quotations for the supply and fit of a new door, emails, a trace report, and information regarding landlord registration. No representations had been received from either of the Respondents other than the emails referred to above from the second Respondent.

6. The Applicant indicated that he had entered into a tenancy agreement from 1st June 2019 with the Second Respondent as tenant and the First respondent as guarantor. He lived near to the First Respondent and neighbours had recommended the second Respondent as a tenant. He was aware that the First Respondent was working when she signed as guarantor, and he became aware that the Second Respondent was in receipt of universal credit shortly after the start of the tenancy. The rent was £ 725 per month and a deposit of £725 was paid. He was asked to move the due date each month for the rent to accommodate the Second Respondent and he agreed to this.

7. Rent payments were missed in September and October 2021 and in February 2022. In November 2021 given the two missed payments the Applicant applied to the DWP to receive rent payments directly and this was successful with rent payments being received direct to his bank. In February 2022 no rent was paid, and the Applicant was advised by email from the DWP that due to a change in circumstances no further rent would be paid by them for the tenancy.

8. The Applicant was aware that the second Respondent had lived at the property with two young children. He had received the keys to the property back in March 2022 from another party on behalf of the second Respondent. There had been no verbal contact between him, and the Respondents and he said there appeared to be a complete communication breakdown.

9. The Applicant advised that he had sent messages to the Second Respondent, the tenant, regarding the outstanding rent and had made phone calls but there had never been any replies. He had indicated that he would consider a payment plan for the arrears but had received no response. He had contacted the First Respondent via messenger regarding the arrears but had received no reply.

10. The Applicant explained that the property had been damaged during the tenancy and he was seeking to recover the cost of a new front door. He referred to further damage in detail but did not wish to seek further time to amend his claim to include further costs but wanted to proceed on the basis of the claim lodged. He was now living in the property, and he said that the front door was still operational in that it still kept the house secure. It was weakened but still in use. He could not afford to replace it currently. He had not prepared a check in document showing the condition of the property before or after the tenancy and had no evidence to show the damage being claimed. Further he accepted that he had not yet incurred a loss for the cost of the door as it had not been replaced.

11. Mr Stewart asked that the Tribunal consider his claim on the basis of what he had provided and did not wish time to obtain more evidence. He was yet to claim back the deposit held by a tenancy deposit provider but understood that if this was claimed in relation to unpaid rent that would fall to be deducted from any order which may be made by the Tribunal in relation to rent arrears. He was also aware that it was open to him to seek return of the deposit on the basis of damage caused to the property by a tenant by breaching the terms of the tenancy agreement.

12. The Tribunal was satisfied that it had sufficient information upon which to make a decision and that the proceedings had been fair.

Findings in Fact

13. The Applicant entered into a tenancy agreement for the property with the Second Respondent with effect from 1st June 2019.

14. The tenancy agreement was also signed by the First Respondent as guarantor, guaranteeing any payments due to the landlord which the First Respondent was required to pay under the tenancy agreement.

15.The monthly rent payable by the Second Respondent in terms of the tenancy agreement was £725 and this was initially payable on the first of each month in advance.

16.The Applicant agreed to alter the payment date for the monthly rent to 5th of each month at the request of the Second Respondent,

17.The Second Respondent was in receipt of universal credit for at least part of the tenancy.

18.No rent was received from or on behalf of the Second Respondent for September and October 2021 and for February 2022.

19.The Applicant applied to received rent payments direct from universal credit when two payments were missed in September and October 2021 and this request was successful.

20.In February 2022 the Applicant was informed by DWP that no further rent would be paid due to a change in circumstances.

21.Rent arrears due for three months of the tenancy in the sum of £2175 have accrued during this tenancy.

22. The property was vacated by the Second Respondent and keys to the property were handed back to the Applicant in March 2022.

23.The Applicant made efforts to contact the First Respondent and the second Respondent by text and phone calls regarding the rent arrears but received no response to these attempts at contact.

24.The sum of £2175 is lawfully due to the Applicant by the First and Second Respondents as guarantor and tenant in terms of the tenancy agreement.

Reasons for Decision

25.Rent arrears accrued in the latter part of this tenancy had not been paid despite requests of both the tenant and guarantor. The action therefor appeared necessary, and the Tribunal granted the order against both parties.

26.The Tribunal could not grant the request for the cost to supply and fit a new front door at the property as there was no evidence presented to show that the door was damaged due to a breach of the tenancy agreement by the Second Respondent and there was no actual loss incurred as the door had not been replaced and was still in use and functioning to secure the property.

Decision

27.The Tribunal made a payment order in the sum of Two Thousand One Hundred and Seventy - Five Pounds Only (£2175.00) in favour of the Applicant and against both Respondents.

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.

Valerie Bremner

Legal Member/Chair

14.10.22_____
Date