



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

Chamber Ref: FTS/HPC/CV/23/0990

Re: Property at 22 2F3 Leith Walk, Edinburgh, EH6 5AA (“the Property”)

Parties:

Mr Mark Stubbs, 99 Tuddenham Avenue, Ipswich, Suffolk, IP4 2HG (“the Applicant”)

Ms Trinity Patel, 2F3, 22 Leith Walk, Edinburgh, EH6 5AA (“the Respondent”)

Tribunal Members:

Gillian Buchanan (Legal Member) and Angus Lamont (Ordinary Member)

Decision (in absence of the Respondent)

At the Case Management Discussion (“CMD”), which took place by telephone conference on 18 September 2023, the Applicant was not present but was represented by Mr Scott Stevenson of Clarity Simplicity Limited. The Respondent was neither present nor represented.

The CMD was in respect of this matter and the related case bearing reference FTS/HPC/EV/23/0989.

The tribunal was satisfied that the requirements of Rule 24(1) of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”) had been satisfied relative to the Respondent having received notice of the CMD and determined to proceed in the absence of the Respondent in terms of Rule 29.

Prior to the CMD the Tribunal had received the following from the Applicant’s representative:-

- i. Email dated 5 September 2023 with attachments; and
- ii. Email dated 8 September 2023 with attachments.

Prior to the CMD the Tribunal had received from the Respondent’s representative, her father Mr Pankaj Patel, the following:-

- i. Email dated 7 September 2023;
- ii. Email dated 9 September 2023 with attachment; and
- iii. Email dated 14 September 2023 with attachment.

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:-

Background

The tribunal noted the following background:-

- i. The Applicant leased the Property to the Respondent with effect from 5 March 2022.
- ii. The lease between the parties is headed “Lodger Agreement”.
- iii. The rent payable in terms of the Lodger Agreement was agreed to be £550 per calendar month payable in advance on the 7th day of each month.
- iv. On 12 December 2022 the Applicant served on the Respondent by Sheriff Officers a Notice to Leave requiring the Respondent remove from the Property by 8 March 2023 on the basis that the Applicant intends to sell the Property.
- v. The application for a payment order is dated 24 March 2023.

The CMD

At the CMD the Applicant’s representative, Mr Stevenson, made the following representations in respect of this application and the associated application FTS/HPC/EV/23/0989:-

- i. At the time the Lodger Agreement was entered into the Applicant was not aware of the legislation in Scotland relative to residential tenancies, or the form of tenancy agreement that should be used. The Applicant lives in England and failed to understand the correct process.
- ii. The Property was purchased by the Applicant to live in for work purposes and with a view to renting out rooms. The Applicant has never lived there whilst anyone else lived there.
- iii. The Lodger Agreement with the Respondent is in fact a Private Residential Tenancy.
- iv. The Applicant only entered into the Lodger Agreement with the Respondent. He became aware that the Respondent’s friend was also living in the Property. He did not consent to the friend being there. The friend left some time ago.
- v. Only the Respondent lives in the Property.
- vi. Whilst the Lodger Agreement refers to a deposit being paid by the Respondent no deposit was taken.
- vii. The Applicant intends to sell the Property. The cost of maintaining the Property is too great given rent is not being paid. The Applicant does not need the Property now for work purposes. The Applicant has no tie with Scotland and has no other properties there. There is no point in the Property being retained.
- viii. The rent arrears now due are £7,700 including the rent due for September 2023.
- ix. The Property has never been a House in Multiple Occupation.
- x. The Applicant was unaware of the need to be registered as a landlord when the Lodger Agreement was entered into. He rectified that as soon as he consulted Mr Stevenson’s firm and was appropriately advised.
- xi. The Applicant tried to have regular contact with the Respondent but was ignored. There has been no offer of payment.
- xii. The Applicant seeks a payment order.

Mr Stevenson sought an amendment to the application per his email of 8 September 2023 to increase the sum claimed to £7,700. The Tribunal referred Mr Stevenson to Rule 14A of the Rules and the requirement for any request to amend the sum claimed in an application to be submitted at least 14 days prior to a CMD. Mr Stevenson accepted his application to amend had not been lodged timeously.

Findings in Fact

The Tribunal made the following findings in fact:-

- i. The Applicant leased the Property to the Respondent with effect from 5 March 2022.
- ii. The lease between the parties is headed "Lodger Agreement" but is, in law, a Private Residential Tenancy Agreement under the Private Housing (Tenancies)(Scotland) Act 2016.
- iii. The rent payable in terms of the Lodger Agreement was agreed to be £550 per calendar month payable in advance on the 7th day of each month.
- iv. The rent arrears are £7,700 as at September 2023.
- v. The rent arrears were £4,400 as at the date of the application.

Reasons for Decision

The Respondent did not attend and was not represented at the CMD. The factual background narrated by the Applicant within the application papers (including the Affidavit of the Applicant dated 2 June 2023) and on his behalf orally at the CMD was therefore accepted by the Tribunal.

The Tribunal refused Mr Stevenson's application to amend the application, the request to amend not having been submitted timeously in terms of Rule 14A of the Rules.

In that rent arrears are due the Tribunal determined that a payment order should be granted in a sum of £4,400.

Decision

The Tribunal grants a payment order against the Respondent in favour of the Applicant in a sum of £4,400.

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.

Since an appeal is only able to be made on a point of law, a party who intends to appeal the tribunal's decision may wish to request a Statement of Reasons for the decision to enable them to identify the point of law on which they wish to appeal. A party may make a request of the First-tier Tribunal for Scotland (Housing and Property Chamber) to provide written reasons for their decision within 14 days of the date of issue of this decision.

Where a Statement of Reasons is provided by the tribunal after such a request, the 30 day period for receipt of an application for permission to appeal begins on the date the Statement of Reasons is sent to them.



Legal Member/Chair

18 September 2023
Date