



**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) and Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/CV/20/0365**

**Re: Property at 40/1 Warrender Park Terrace, (Ground floor flat), Edinburgh, EH9 1EB (“the Property”)**

**Parties:**

**Mr Roderick Glen and Mrs Margaret Glen, 4 Bruntsfield Terrace, (Flat 3F1), Edinburgh, EH10 4EX (“the Applicant”)**

**Ms Zola Affley, 213/8 Leith Walk, Edinburgh, EH6 8NX (“the Respondent”) per her representative, Mr. Andrew Wilson of Community Help and Advice Initiative, 5<sup>th</sup> Floor, Riverside House, 502, Gorgie Road, Edinburgh, EH11 3AF (“the Respondent’s Representative”)**

**Tribunal Members:**

**Karen Moore (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) granted an Order for TWO THOUSAND NINE HUNDRED AND THIRTY EIGHT POUNDS AND SEVENTY FIVE PENCE £2,938.75 (Sterling) plus interest at the rate of Eight per centum per annum (8%) from 1 October 2020.**

**Background**

1. By application received between 3 and 26 February 2020 (“the Application”), the Applicants made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a payment order for rent due arising from a private residential tenancy agreement between the Parties. The Application comprised an application form, copy private residential tenancy agreement showing a monthly rent of £1,500.00 and statements of rent due and paid showing rent arrears amounting to £26,300

plus unpaid deposit of £1,500.00 as 25 February 2020 and a claim for £24,800.00 plus the deposit and interest. The Application also comprised copy documentation relating to and arising from the private residential tenancy agreement between the Parties.

2. On 11 March 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Case Management Discussion (“CMD”) was fixed for 17 August 2020 at 14.00 by telephone conference call. The Application was intimated to the Respondent. The CMD was intimated to both Parties.
3. Prior to that CMD, the Respondent lodged a copy interlocutor dated 17 March 2020 from Edinburgh Sheriff Court making a determination of sequestration against her and advised the Tribunal that as the debt sought by the Applicants formed part of her sequestration, the Application should be dismissed.
4. Also, prior to that CMD, the Applicants amended the Application and sought payment of sums due from 7 January 2020 to 24 May 2020.

#### **First CMD**

5. The CMD took place on 17 August 2020 at 14.00. The Applicants both took part. The Respondent did not take part and was represented by Mr. Wilson of the Applicant’s Representatives.
6. At that CMD, the Applicants sought to amend the sum sought by a further £1,400.00 being sums due to them by the Respondent in respect of her occupancy of a property in London. Mr. Wilson on behalf of the Applicant opposed the Application in respect of the principle sum on the basis of the effect of the sequestration but accepted that the Applicants might be entitled to an Order for rent due and owing following the sequestration.
7. The outcome of that CMD was that further information and clarification was sought from the Applicants in respect of the Application and the sums claimed. This further information was:-
  - i) What is the sum owed by the Respondent to the Applicants which forms part of her sequestration?
  - ii) Are the Applicants entitled to a payment order for that sum?
  - iii) What is the sum owed for the period 7 January 2020 to 24 May 2020?
  - iv) Are the Applicants entitled to an Order for £1,400.00 being sums due to them by the Respondent in respect of her occupancy of a property in London?

8. The CMD was adjourned to a later date and the Applicants were directed to lodge a statement showing the sums due and paid for the period of 7 January 2020 to 24 May 2020.

## **Second CMD**

9. A second CMD was fixed for 1 October 2020 at 14.00 by telephone conference call and was intimated to both Parties.
10. Prior to that CMD the Applicants wrote to the Tribunal by email on 3 September 2020 indicating that they had contacted the Messrs Wylie & Bisset, the agents for the Trustee in Bankruptcy for the Respondent, who confirmed that the sum included in the sequestration is £26,900 inclusive of the sum of £1,400.00 due to them by the Respondent in respect of her occupancy of a property in London. The applicants indicated that they no longer sought an Order for the sum of £1,400.00.
11. In that email, the provided a statement showing the sums due and paid by the Respondent for the period of 7 January 2020 to 24 May 2020 resulting in a balance of £4,438.75 due and owing by the Respondent to the Applicants.
12. By further email, the Applicants wrote to the Tribunal enclosing correspondence from Messrs Wylie & Bisset, the agents for the Trustee in Bankruptcy for the Respondent, confirming that the claim of £26,900 is included in the sequestration.
13. The Applicants emails were intimated to the Respondent.
14. The CMD took place on 1 October 2020 at 14.00. The Applicants both took part. The Respondent did not take part and was represented by Mr. Wilson of the Respondent's Representatives.

## **Summary of Discussion at Second CMD.**

15. The Tribunal advised the Applicants that it had read and was familiar with all of the background papers.
16. The Tribunal asked the Applicants to clarify the sums sought with reference to:
  - i) The sum claimed in application form is £24,800.00 (presumably £25,500.00- £700.00) plus deposit plus interest;

- ii) The original rent statement with the application form shows a balance of £27, 800.00 being rent due to 15 February 2020 of £26,300.00 and including the unpaid deposit of £1,500.00;
- iii) The tenancy agreement states that rent is payable in advance and so the rent due on 15 September 2018 is for the period to 15 October 2018 and so on;
- iv) The updated rent statement shows rent due from 7 January 2020 to 24 May 2020 and so includes two amounts of £1,500.00 which appear in the original rent statement and a payment of £700.00 which also shows in the original rent statement ;
- v) The updated rent statement shows rent due from 7 January 2020 to 24 May 2020 and so includes the rent of £1,500.00 due on 15 January which forms part of the sequestration claim;
- vi) The updated rent statement is for the period to 15 June 2020.
- vii) The Respondent vacated the Property on 24 May 2020 but is liable for rent due to the end of the rental period on 14 June 2020;
- viii) The sum claimed in the sequestration is £26, 900.00 inclusive of the £1,400.00 for the London property;
- ix) The balance of the sum claimed in the sequestration is £25,500.00 which sum equates to the rent claimed as due as at 15 January 2020 to 15 February;
- x) No tenancy deposit was paid;

17. The Tribunal advised the Parties that the sum of £25,500.00 being rent due to 15 January 2020 as originally sought by the Applicants is included in the Respondent's sequestration. The effect of a sequestration is that the debts cannot be pursued further and so the Tribunal has no power to make an award in that respect.

18. The Tribunal explained that it appeared that further rent fell due between 15 February 2020 and 14 June 2020 amounting to £6,000.00. From the updated rent statement, payments made during that period amount to £3,061.25. Accordingly, there is a balance of £2,938.75 which appears to be due and owing outwith the sequestration.

19. The Tribunal asked the Respondent's Representative if the Respondent agreed that the sum of £2,938.75 is due and owing by the Respondent to the Applicants that this sum is not included in the Respondent's sequestration. The Respondent's Representative confirmed this agreement and confirmed that an Order for this sum was not opposed.

20. The Tribunal noted that interest at the judicial rate is sought. The Respondent's Representative confirmed this agreement and confirmed that this was not opposed.

## **Findings of the Tribunal.**

21. From the Application and the CMD, the Tribunal found the following facts to be established: -

- i) There was a private residential tenancy agreement between the Parties which began on 15 September 2018;
- ii) The monthly rent was £1,500.00 payable in advance;
- iii) Notwithstanding the terms of the tenancy agreement, the Respondent did not pay a deposit;
- iv) The Respondent paid no rent until 20 January 2020 at which time the rent arrears had amounted to £25,500.00 for the period to 15 February 2020;
- v) The Respondent paid £700.00 on 20 January 2020;
- vi) The Respondent was sequestrated on 17 March 2020;
- vii) The Applicants have a claim in that sequestration of which the said £25,500.00 rent forms part;
- viii) The operation of bankruptcy law prevents the Tribunal from granting an Order in respect of the sequestration claim;
- ix) Since the Applicants' sequestration claim was made, further rent at £1,500.00 per month amounting to £6,000.00 for the following periods fell due :  
15 February – 14 March 2020  
15 March – 14 April 2020  
15 April – 14 May 2020  
15 May – 14 June 2020.
- x) Payments of £3,061.25 were made during this period;
- xi) Accordingly, there is a balance of £2,938.75 due by the Respondent to the Applicants which falls outwith the sequestration;
- xii) The Applicants seek interest at the judicial rate in terms of the Application.

## **Decision of the Tribunal and Reasons for the Decision.**

22. Having found the sum of £2,938.75 is due and owing, the Tribunal had regard to Rule 17(4) of the Rules which states that the Tribunal "may do anything at a case management discussion .....including making a decision" and so proceeded to make an order for payment with interest as requested.

## **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.

# K Moore

1 October 2020

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Legal Member/Chair