



**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/20/1730**

**Re: Property at 165/2 Slateford Road, Edinburgh, EH14 1PD (“the Property”)**

**Parties:**

**Mrs Nilmini Wijewardena, 46/1, Granton Crescent, Edinburgh, EH5 1BL (“the Applicant”)**

**Mr Ramsay McIver, Mrs Caroline Ross, 163/24, Slateford Road, Edinburgh, EH14 1PD (“the Respondent”)**

**Tribunal Members:**

**David Preston (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) dismissed the application for payment.**

**Background**

1. This was a Case Management Discussion (CMD) in respect of an application for payment arising from a Private Rented Tenancy Agreement between the parties dated 17 March 2019.
2. On 13 October 2020 a CMD was convened by telephone in accordance with the provisions dealing with business during the COVID-19 pandemic. The parties were present by telephone.
3. The tribunal had before it:
  - i. Application dated 17 August 2020 with supporting documentation.
  - ii. Private Rented Tenancy Agreement dated 17 March 2019.
  - iii. Emails and text messages between the parties.
  - iv. Gumtree advertisements in respect of the property.

- v. Written statement from Akita Deshan Kulatunga.
  - vi. Written statement from the applicant.
  - vii. Written representations from the respondents dated 5 & 12 October 2020.
  - viii. Further representations from the applicant dated 9 October 2020.
4. By Decision dated 1 September 2020 Convener of HPC having delegated power for the purpose, referred the application under rule nine of the Rules to the tribunal.
5. The convener explained that the purpose of the CMD was to identify any disputed issues which would fall to be determined if the application proceeded to a full hearing although if the tribunal considered that it had sufficient information on which to make a Decision, the rules permitted such a decision to be made.

### **Discussion**

6. The convener advised that he had received the papers as listed above in advance of the CMD and enquired as to whether either party wish to make any additional representations in respect of new matters not covered in the written representations. Both parties indicated that they had nothing further to add and that they understood that a decision could be made. He identified that the two issues which fell to be decided were:
- i. Whether the applicant was entitled to recover the sum of £360 being 12 months at £30 per month which she contended should not have been paid as it represented factors fees; and
  - ii. The number of additional days in respect of which rent at the rate of £41 per day should apply.

### *Increased Rent*

7. The applicant pointed out that the property had been advertised on Gumtree at proposed rent of £1200 per month. She referred to a discussion taking place at the time the tenancy agreement was signed during which it was agreed that an additional £30 per month would be paid. She contended that this was in respect of a factor's cleaning and maintenance fee and claimed that this was the responsibility of the respondents and that she should not have to pay for this in addition to the rent.
8. The respondents referred to Clause 7 of the Agreement which specified the rent as £1230 per calendar month. They explained that they had obtained advice from an estate agent and that they had anticipated being able to achieve a rent in excess of £1200 per month and had negotiated a figure of £1230 after discussion with the applicant to which she agreed and which had been included in the rental agreement signed by her.

### *Additional Days*

9. The applicant occupied the property from 17 March 2019 to 22 March 2020 and agreed that she would pay rent at a daily rate beyond 17<sup>th</sup> of March 2020. She calculated this to be total of 5 days, being 18, 19, 20, 21 and 22 March. She referred to Clause 7 of the Tenancy Agreement which stated that the first payment of rent was for the period 17 March 2019 to 17 April 2019 and that future payments were to be made of the 17<sup>th</sup> of each month. She had accordingly paid for occupation of property up to and including 17 March.
10. The respondents said that there were 6 additional days which included 17<sup>th</sup> March 2020.

### **Reasons for Decision**

11. Rule 17 of the Regulations states that the tribunal may do anything at a CMD which it may do at a hearing, including making a decision. The tribunal decided that, on the basis of the information presented to it, it was able to determine the application at the CMD.
12. In coming to its decision, the tribunal had regard to the representations and documents presented to it in support of the application as well as the representations and documents submitted by the respondents.
13. The tribunal considered the terms of the lease which had been signed by both parties. It was neither contested that the tenancy agreement specified the rent at £1230 per calendar month nor that the applicant had signed the agreement in those terms. The tribunal did not consider that it should look behind the terms of the agreement as signed. Reasons for any landlord to accept any level of rent is entirely a matter for them. The applicant suggested that some form of payment to the factors would be unlawful. The Tribunal rejects this argument on the basis that the landlord will require to cover various outlays from whatever rent is achieved before striking any profit.
14. The tribunal also noted that the applicant had paid the full sum of £1230 per month throughout her occupation of the property and finds that as a consequence she had acquiesced in the sum of £1230 as stated in the Agreement and was consequently barred from raising her objection retrospectively.
15. In respect of the number of additional days to be paid, tribunal considers that the rent is payable on a calendar month basis. The first payment was made on 17 March 2019 in respect of occupation of the property for a calendar month from and including that date. A calendar month following 17<sup>th</sup> of March concludes on 16 April irrespective of the date specified in the tenancy agreement. Such a specified date is merely a date by which the landlord can expect to receive payment each month. Accordingly, 17 March 2020 was the first additional day and should be included in the additional payment due by the applicant.

16. The representations from both parties included allegations and details about matters extraneous to the matters at issue which were rejected by the tribunal as unnecessary or irrelevant to its consideration of the issues.

17. The tribunal accordingly determines that both elements of the application must fail and dismisses the application.

### **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.**

**David Preston**

13 October 2020