



**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/19/3939

Re: Property at 19F Hughenden Gardens, Glasgow, G12 9XZ (“the Property”)

Parties:

**Mr Robert Ross, Ms Victoria Cookson, c/o Tay Letting Limited, 8 Eagle Street,
Craighall Business Park, Glasgow, G4 9XA (“the Applicants”)**

**Mr Paul Thomas Dougan, 16 Greenland Parade, Larne, County Antrim, BT40
2BJ (“the Respondent”)**

Tribunal Members:

George Clark (Legal Member) and Leslie Forrest (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) made an Order for Payment by the Respondent to the Applicant of the sum of £5,053.21. The Tribunal refused the application for interest on the sum awarded from the date of its Decision until payment and refused the application for an award of expenses.

Background

1. By application, received by the Tribunal on 12 December 2019, the Applicant sought an Order for Payment against the Respondent in respect of unpaid rent in respect of the Property. The sum sought was £3,675. The Applicant also sought interest on that sum at 8% per annum from the date of the Order until paid, and an order for expenses.
2. The application was accompanied by a copy of a Private Residential Tenancy Agreement between the Parties, commencing on 12 April 2019 at a rent of £1,225 per month and a statement that the rent due on 1 October, 1 November and 1 December 2019 had not been paid.
3. On 6 January 2020, the Tribunal advised the Parties of the date, time and venue for a Case Management Discussion and the Respondent was invited to

make written representations by 27 January 2020, a date that was subsequently extended by the Tribunal at the request of the Respondent.

4. In an email to the Tribunal of 22 January 2020, in which he asked the Tribunal to forward the papers to him, the Respondent stated that the locks had been changed on 10 October 2019 after the Police had broken down the door of the Property and that he had released the deposit to the letting agents in December.
5. On 29 January 2020, the Respondent made written representations to the Tribunal in which he confirmed that he had left the Property on 1 October 2019 and that, due to an oversight, he had failed to make the October rent payment. He had been out of the country for October and most of November and had not picked up communications from the Applicant's agents until 21 November. On 27 November 2019, he had stated to them his intention to leave the Property as soon as possible and had suggested the letting agents liaise with a colleague of his, to resolve the matter of clearing the Property of the Respondent's belongings and effects. He had also told the Applicant's letting agents that he was happy to release the deposit of £1,837.50.
6. The Respondent stated in his representations that, on 10 October 2019, only ten days after the rent had fallen due, the letting agents had called the Police to the Property, supposedly to check on his welfare, and, despite the letting agents having at least one spare set of keys for the Property, they had changed the locks. The Respondent repeated that he was prepared to agree to voluntarily surrender possession of the Property and to have his possessions removed.
7. Following a Case Management Discussion on 6 February 2020 (at which the Respondent was not present or represented, after having earlier requested to participate by telephone conference call), the Tribunal adjourned consideration of the application to a full Hearing. The Tribunal noted the terms of an email from the Respondent to the Applicant's letting agents dated 4 November 2019, in which he admitted he had left the Property on 1 October and had not returned. He acknowledged that he had not paid the rent on 1 October and, by inference, since then.
8. The email of 4 November suggested that the letting agents should liaise with a colleague of the Respondent to clear the flat. The Applicant's solicitor told the Tribunal that the letting agents had contacted the named colleague and had made arrangements to meet him at the Property, but he had not turned up and neither he nor they had been in contact since. The Tribunal stated in its Decision that this was a matter which was to be clarified at the Hearing.
9. With reference to the Respondent's emailed representations to the Tribunal of 29 January 2020 regarding the changing of the locks, the Applicant's solicitor told the Tribunal that the letting agents had advised the Respondent of the change and that he could collect new keys from their office. The view of the Tribunal was that it required to hear at the forthcoming Hearing from the Applicant whether it was necessary to break into the Property, rather than use spare keys and why such action was deemed necessary only ten days after the Respondent had failed to pay the October rent.
10. There was a further issue in relation to a Notice to Leave which was to be explored further at the Hearing but, as it related to an accompanying application for an Eviction Order, it was not relevant to the present proceedings.

11. The Hearing scheduled for 24 April 2020 was postponed due to the COVID-19 outbreak and lockdown restrictions.

The Hearing of 13 August 2020

12. A Hearing was held by way of a telephone conference call on the morning of 13 August 2020. The Applicant was represented at the Hearing by Mr Andrew Hunter of Harper Macleod LLP solicitors, Glasgow. The Respondent participated in the telephone conference call.
13. At 17.35 on the previous day, the Applicant's solicitors had emailed the Tribunal with an updated rent statement which showed receipt of the deposit from the tenancy deposit scheme but also additional rent arrears for the period to 19 March 2020. They stated that the Respondent had voluntarily left the Property and removed his belongings from it as at 19 March 2020.
14. The Legal Member of the Tribunal told the Applicant's agent that the Tribunal was not prepared to accept these representations at such a late stage, as they had not yet been intimated to the Respondent, who had thus had no opportunity to comment on them. The Tribunal could, therefore, only deal with the rent position as at the date of the application, unless the Applicant wished to move for a continuation to allow time for this process to be carried out. The Applicant could, however, decide to proceed as indicated by the Tribunal, reserving the right to submit another application in respect of rent payments they contended were due on 1 January, 1 February and 1 March 2020. The Applicant's solicitor accepted that the Tribunal could not consider these three months' rent at the present Hearing.
15. The Respondent told the Tribunal that, in his view, the tenancy ended on 10 October 2019, when the Applicant's letting agents changed the locks on the Property. He had accepted that he had not paid the October rent and had told SafeDeposits Scotland that he agreed to the deposit being returned in full to the Applicant's letting agents. This had happened on 27 November 2019. The fact that the Applicant's letting agents had changed the locks meant that the Respondent had been denied access and, in his view, the tenancy had been terminated, at least constructively, by that act. He was willing to make some concessions, but he was not prepared to accept that the letting agents had been helpful in the matter of access to clear his belongings, it had not been possible to find a mutually acceptable date until March 2020.
16. The Respondent was adamant that no rent was due after 10 October 2019. As he had not expected this to be the focus of attention at the Hearing, his intention was to seek legal advice on this point. He was, however, prepared to meet the Applicant's solicitors' fees if a line could be drawn under the whole matter.
17. It became clear to the Tribunal that it would be necessary to continue the Hearing to a later date, to enable the Respondent to obtain such legal advice as he wished and to enable the Applicant to provide evidence in relation to the events of 10 October 2019 (and in particular the decision by the letting agents to break into the Property and change the locks rather than use spare keys and any communication they had with the Respondent following that decision, as to his collecting new keys from their office) and evidence relating to the

process by which arrangements were made to clear the Respondent's belongings from the Property.

18. The Applicant's solicitor advised the Tribunal that he would be taking instructions regarding seeking to amend the application to include the rent from 1 January to 19 March 2020 and that he would provide the Respondent with his full contact details to pass on to his legal advisors. The Tribunal told the Parties that it was competent for the Applicant to seek to amend the application at any time, on proper notice being given and the Respondent being given an opportunity to make representations.
19. The Tribunal determined that the Hearing should be adjourned to a later date, to be intimated to the Parties. At the reconvened Hearing, the Tribunal would expect to be addressed in particular on the issues set out in Paragraph 17 of this Decision. The Respondent should also provide the Tribunal with a copy of the email of 4 November 2019 referred to in Paragraphs 5 and 8 of the Case Management Discussion Note of 6 February 2020. Any documentary evidence on which the Parties sought to rely must be forwarded to the Tribunal at least 14 days prior to the reconvened Hearing.

Further Written Representations.

20. On 9 September 2020, the Applicant's solicitors provided the Tribunal with further written representations. They sought to amend the application to increase the sum claimed to £5,053.21, reflecting the rent due to 19 March 2020, under deduction of the deposit of £1,837.50 which had been repaid to the Applicant. They also provided a chronological summary of events from 1 October 2019 until 19 March 2020.
21. The rent due on 1 October 2019 had not been paid and, on 4 October, the Applicant's letting agents contacted the Respondent by telephone and email to request payment. They emailed the Respondent again on 7 October, reminding him that payment was overdue and advising him that their attempts to contact him had been unsuccessful. They emailed him again on 9 October, confirming that continued attempts to contact him had been unsuccessful, with telephone calls to both numbers they held for him going straight to voicemail and emails not being answered. A representative of the letting agents had attended the Property to attempt to make contact but had received no answer. A neighbour had advised that the Respondent had not been seen for some time and when the letting agents called the Respondent's office, they had been told that he had not been in the office for some time and they did not know when he would be back.
22. In their email of 9 October, the letting agents advised the Respondent that they had concerns for his welfare and that they wished to raise the matter with the police. On 10 October, they contacted Police Scotland and raised a welfare concern. Police Scotland said that no direct steps would be taken, but later that day, they called the letting agents to say that officers had been sent to the Property to check on the Respondent. Police Scotland asked the letting agents to attend with a spare key, but their agents were elsewhere at the time and unavailable and the officers arrived first. The letting agents asked their contractor to attend but by the time he arrived, Police Scotland had already

- taken entry to the Property and had found that the Respondent was not there. Later that day, the letting agents emailed the Respondent to explain that Police Scotland had attended the Property and had taken access without the spare key being available, that the locks required to be changed and that keys for the new lock were available for collection by the Respondent.
23. On 22 October, the letting agents emailed the Respondent again, advising the rent had still not been paid and that the keys had not been uplifted.
 24. On 4 November, a Struan Johnston contacted the Applicant's solicitors to advise that the Respondent was unable to deal with any matters regarding the Property and rent as he was in hospital with a head injury. Following subsequent enquiries by the letting agents, it appeared that this information was not factually correct.
 25. On 28 November, the Respondent confirmed by email that he had authorised the release of the tenancy deposit to the Applicant as a payment in respect of arrears of rent. On the following day, he contacted the letting agents and suggested that he and Mr Johnston attend at the Property with a view to removing personal belongings. There was, however, no further contact from him until 13 January 2020, when he emailed the letting agents and requested information about access to the Property.
 26. On 16 January, the letting agents confirmed to the Respondent that access could be arranged whenever the Respondent wished, provided sufficient notice was given to allow a member of staff to be present with keys to the Property. On 21 January, the letting agents emailed the Respondent, confirming again that the locks had not been changed by the letting agents but that it had been done following the police forcing entry to do a welfare check. The letting agents confirmed that the full day of Monday 27 January had been blocked out for a member of staff to be at the Property to allow access. The Property was not cleared on 27 January.
 27. On 3 February, the Respondent contacted the Applicant's solicitors, requesting a reasonable period of time to access the Property. The Applicant agreed a period of two weeks and this proposal was accepted by the Respondent on the following day.
 28. On 17 February, the Respondent emailed the letting agents to confirm that the Property would most likely be cleared on 20 or 21 February. It was not cleared on those dates. Further dates were then offered to the Respondent to clear the Property, but he delayed in doing so. He eventually arranged for the Property to be cleared on 19 March 2020 and it was on that date that vacant possession was provided to the Applicant.
 29. The written representations from the Applicant's solicitors were copied to the Respondent, but he did not provide any response to the Tribunal and did not provide a copy of the email of 4 November 2019 which the Tribunal had requested following the Hearing of 13 August 2020.

The Hearing of 24 September 2020

30. On 24 September 2020, the Hearing was reconvened, again by a telephone conference call. The Applicant was represented by Ms Eilidh Crawford of Harper Macleod LLP, solicitors, Glasgow. The Respondent did not participate and was not represented. Ms Crawford asked the Tribunal to grant an Order

for Payment of the increased sum of £5,053.21 in terms of the request of 9 September to amend the application.

31. Ms Crawford reiterated that the changing of the locks had been necessitated entirely by Police Scotland forcing entry after the Applicant's letting agents raised legitimate welfare concerns in relation to the Respondent and she highlighted the written submissions regarding this issue, including the emails advising the Respondent that keys for the new lock could be collected from their office.
32. The Tribunal asked Ms Crawford for further information regarding the sequence of events that led to the deposit being returned to the Applicant in January 2020 and, following a short adjournment, she provided the Tribunal with copies of the relevant email from the Respondent to the letting agents. The email was timed at 14.34 on 27 November 2019 and attached to it was a proposal from SafeDeposits Scotland timed at 11.46 that morning that the deposit be repaid in full to the letting agents. In his email, the Respondent confirmed that the arrangement was acceptable to him. Ms Crawford told the Tribunal that her clients had advised her that it had been the Respondent who had suggested to the letting agents that they should obtain repayment of the deposit toward outstanding rent. He had suggested to the letting agents that he would not be in a position to vacate the Property for some time and the application to SafeDeposits Scotland stated that arrears would continue to mount up until he vacated the Property. The Respondent had acknowledged that position by accepting the proposal on 27 November 2019. The proposal stated in terms that the arrears stood at £2,312.40 "which will keep increasing until we get possession as well as potential repairs and cleaning which we will know after report is done". Ms Crawford also told the Tribunal that the Applicant had confirmed that the Respondent had not at any time given notice that he intended to terminate the lease.
33. Ms Crawford then left the Hearing and the Tribunal considered all the written evidence before it and the oral evidence given at both Hearings.

Reasons for Decision

34. At the Case Management Discussion on 6 February 2020, the Legal Member of the Tribunal identified two issues for clarification at the Hearing. Firstly, why was it necessary to break into the flat, rather than use any spare keys in the possession of the agents and secondly, why was such action deemed necessary only 10 days after the Respondent had left the flat? At the Hearing on 13 August 2020, the Respondent was adamant that he was not due to pay any rent after the date of that incident, namely 10 October 2019. The Tribunal had decided to adjourn that Hearing to allow the Applicant to provide evidence on that matter.
35. The Applicant's solicitors provided written representations on 9 September 2020 which have been summarised in the preceding paragraphs 20-28 of this Decision. The Tribunal considered these representations very carefully and decided that the Applicant's letting agents were justified in raising with Police Scotland their concerns for the welfare of the Respondent. They had been unable to make contact with him on either of two telephone numbers they had for him, he had not responded to any of a series of emails between 4 and 9

October and neither his neighbours nor his work colleagues had seen him for some time. The view of the Tribunal was that the agents had acted responsibly in relation to their welfare concerns.

36. The Tribunal noted that it was Police Scotland who forced entry to the Property. They chose to do so before the letting agents or their contractor could provide keys. This was an indication that the police, too, had welfare concerns based on the information provided by the letting agents and this added force to the Tribunal's view that the agents had acted responsibly in reporting those concerns.
37. The Tribunal also noted that, on several occasions, the letting agents had told the Respondent that he could collect keys for the new lock from their office and the Tribunal concluded that the Respondent had not been prejudiced in any way by the changing of the locks. It was clear that the Respondent had not been denied access to the Property as a result of the locks being changed, so the Tribunal determined that the assertion by the Respondent that the lease had, in effect, been terminated on 10 October 2019 was wholly unjustified. Accordingly, the tenancy had continued and, with it, the liability to pay rent.
38. The Tribunal then considered whether the application by the letting agents to SafeDeposits Scotland was deemed to be an acceptance that the tenancy had come to an end. Rule 24 of The Tenancy Deposit Schemes (Scotland) Regulations 2011 provides that a landlord must apply to the scheme administrator for repayment of any tenancy deposit paid to an approved scheme on, or as soon as is reasonably practicable after, the end of the tenancy and that the application must specify the date on which the tenancy ended. The Tribunal did not have sight of the application form, but the document emailed to the Respondent by SafeDeposits Scotland clearly stated that arrears would continue to mount up, and that statement was deemed to have been accepted by the Respondent when he agreed to the proposal. Accordingly, the Tribunal decided that the lease did not terminate on 27 November 2019 or in January 2020, when the deposit was repaid by SafeDeposits Scotland to the Applicant's letting agents. The Respondent, who did not at any time give notice to terminate the tenancy, was, therefore, liable to pay rent until the date that he removed his belongings from the Property.
39. The Tribunal noted the written submissions in relation to the eventual clearing of the Respondent's personal belongings from the Property. The Tribunal was satisfied from the written submissions of 9 September 2020 on behalf of the Applicant, which were not challenged by the Respondent, that the delay in clearing the Property was not in any way attributable to the Applicant or the letting agents. The onus lay with the Respondent, not with the letting agents, to make suitable arrangements, after his email to them of 28 November 2019. The Respondent could have collected keys from the agents at any time after the lock was changed on 10 October 2019. The agents told him that in an email on that day. They reminded him on 22 October. He contacted the agents on 29 November but did not follow that up. The letting agents told him by email on 16 January 2020 that access could be arranged at any time, subject to notice, to ensure a member of staff could attend with the keys. He failed to attend to clear the Property on 27 January, 20 or 21 February or on subsequent dates offered to him and did not remove his belongings until 19 March.

40. Having taken into account all of the written and oral evidence before it, The Tribunal determined that the tenancy ended on 19 March 2020 and that the Respondent was liable to pay rent up to and including that date. The Applicant's solicitors had provided a Rent Statement with their written representations of 9 September 2020, which the Respondent did not challenge either in writing or by being present or represented at the continued Hearing. That Statement showed arrears of £5,053.21 and the Tribunal held that this sum was lawfully due by the Respondent to the Applicant.
41. The Tribunal was not prepared to make an Order for interest on the sum awarded, as the Tenancy Agreement did not contain any provision for payment of interest on rent paid late. The Tribunal also refused the application for expenses which, in terms of Rule 40 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, can only be awarded against a party where that party through unreasonable behaviour in the conduct of a case has put the other party to unnecessary or unreasonable expense. Parties are entitled not to participate in the proceedings of the Tribunal and, whilst it was disappointing that the Respondent, having indicated at the first Hearing that he was going to use the period of adjournment to seek legal advice, was not then present or represented at the continued Hearing, the adjournment was not principally for his benefit. The Tribunal required information and documentation from both Parties, and it afforded the Applicant the opportunity to lodge an amendment to the application to increase the amount sought. The Respondent had failed to produce the document that the Tribunal had asked him to produce in advance of the continued Hearing but had gained no advantage from that failure. The Tribunal was of the view that the Respondent's behaviour in his conduct of the case could not be regarded as unreasonable.

Decision (in absence of the Respondent)

42. The Tribunal made an Order for Payment by the Respondent to the Applicant of the sum of £5,053.21. The Tribunal refused the application for interest on the sum awarded from the date of its Decision until payment and refused the application for an award of expenses.

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.

George Clark
Legal Member/Chair

_____ **25th September 2020** _____
Date