



**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/19/1444

Re: Property at 130 Hamilton Place, Aberdeen, AB15 5BB (“the Property”)

Parties:

Mr Edward Adderley, 106 Clifton Road, Aberdeen, AB24 4RD (“the Applicant”)

**Mr Peter Mearns, 6A St Swithin Street, Aberdeen, AB10 6XE (“the
Respondent”)**

Tribunal Members:

Fiona Watson (Legal Member) and Mike Scott (Ordinary Member)

Decision (in absence of the Respondent)

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the
Tribunal”) determined that an order is granted against the Respondent for
payment of the undernoted sum to the Applicant:**

**Sum of SEVEN THOUSAND SIX HUNDRED AND FIFTY POUNDS (£7,650)
STERLING**

- Background
- 1. An application dated 7 May 2019 was submitted to the Tribunal under Rule 70 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking a payment order against the Respondent in relation to repayment of rent paid under an assured tenancy agreement.

- The Case Management Discussion
2. A Case Management Discussion took place on 9 October 2019. Both parties were personally present. The Applicant sought repayment of rent paid between May 2016 and March 2019 in the sum of £7,650 due to the Respondent's failure to allow him occupancy of a room let to the Applicant during that period. The Respondent denied that repayment of rent was due, stating that the payments were taken in lieu of storage costs incurred in storing the Applicant's goods, whilst he occupied alternative accommodation provided by the Respondent during that period. A Hearing was accordingly fixed for evidence to be heard on the matter.
 3. A Hearing took place on 9 January 2020. The Applicant was personally present and supported by his wife. There was no appearance by or on behalf of the Respondent. The Tribunal was satisfied that the Respondent had had sufficient notice of the Hearing date and accordingly that the Hearing should run in his absence.
 4. The Applicant moved for the order for payment to be granted as sought. The parties had entered into an Assured Tenancy Agreement for the let of a room at 130 Hamilton Place, Aberdeen, which let commenced October 2007. In 2016 an altercation took place between the Applicant and another tenant in said property which resulted in criminal proceedings against the Applicant. Bail conditions were imposed on the Applicant which prevented him from returning to the room at 130 Hamilton Place between March 2016 and May 2016. The Respondent provided the Applicant with alternative accommodation during that time in a room at a property at Clifton Road, Aberdeen. The Applicant agreed with the Respondent that this would be a temporary arrangement. The alternative accommodation provided was smaller, and unsuitable for the Applicant. The Applicant paid rent of £310 per month for the room at the property at Clifton Road. He continued to make payment of the monthly rent of £255 for the room at Hamilton Place. Following the removal of the bail conditions in May 2016, the Applicant requested that he be allowed to reoccupy the let room at Hamilton Place. This was refused by the Respondent. The Respondent had re-let the room at Hamilton Place to another tenant. Upon taking advice, the Applicant continued to make payment of the rent for the room at Hamilton Place as he wished to keep his tenancy alive and return to said property. Between May 2016 and March 2019 the Respondent refused to allow the Applicant to return to the let room at Hamilton Place, whilst continuing to accept rent payments for same. The Applicant requested he be permitted to return on a number of occasions during that period, which were refused. An alternative room in the same property at Hamilton Place became available in March 2019, at which point the Applicant was permitted to move into same.
 5. When the Applicant originally moved into the let room at Hamilton Place, the Respondent allowed him to store a number of items in the basement at no additional cost. When the Applicant moved to the property at Clifton Road he requested that he be reunited with his belongings, which was refused by the Respondent. The belongings were stored in outbuildings. No commercial or

safe storage was used by the Respondent. The Applicant was denied access to his items and he did not consider that they were held securely. There was not sufficient room for the items to be stored in the small room he occupied at Clifton Road, Aberdeen. The Tribunal noted that it had been agreed by the parties at the CMD that the Hearing was restricted to the question of whether the rent due should be repaid, and therefore the issue of the storage or otherwise of the Applicant's items and any alleged losses as a result of same was not considered.

6. In written submissions the Respondent stated that the payments made by the Applicant were accepted as payment of storage costs for the Applicant's items during the period May 2016 to March 2019, and not accepted as rent. This was denied by the Applicant. No storage costs had been incurred by the Respondent. It was noted by the Tribunal that no documentation was lodged by the Respondent to evidence any such storage costs having been incurred, nor any explanation given as to why the storage costs alleged by the Respondent amounted to exactly the same figure as the rental payments agreed.
7. The Applicant submitted that there had been no written lease entered into for the let of the room at Hamilton Place. Payment of rent in the sum of £255 per month was paid for the room from October 2007 onwards. Again, no written lease was entered into for the let of the room at Clifton Road until some time after occupation, when the local authority required a lease for the purposes of a benefits assessment. Rent in the sum of £310 per month was paid by the Applicant to the Respondent from March 2016 onwards for said lease. No Notice to Quit was ever issued to the Applicant nor any formal steps taken by the Respondent to lawfully terminate the lease of Hamilton Place.
8. The Applicant had paid the sum of £7,650 for the period May 2016 to March 2019 for the let at Hamilton Place during which time he had entirely been deprived of occupancy. The Respondent had re-let the property and accordingly had received double rent during that time. The Applicant sought repayment of rent paid due to the failure by the Respondent to provide the Applicant with the benefit of occupancy in terms of the lease entered into between the parties.

- Findings in Fact

9. The Tribunal made the following findings in fact:
 - (a) The parties entered into an Assured Tenancy Agreement ("the Agreement") for the let of the room at 130 Hamilton Place, Aberdeen ("the Property") which commenced October 2007;
 - (b) The agreed rent between the parties under the Agreement was £255 per month;
 - (c) The Respondent was unable to occupy the Property between March 2016 and May 2016 due to bail conditions imposed on him;
 - (d) No steps were taken by the Respondent to formally terminate the Agreement;

- (e) The Applicant made payment of rent under the terms of the Agreement between March 2016 and March 2019;
- (f) The Respondent deprived the Applicant of occupancy of the Property in terms of the Agreement between May 2016 and March 2019;

- Reasons for Decision

10. The Tribunal was satisfied that the Applicant was entitled to the sum as sought. The Applicant entered into the Agreement with the Respondent, which was never formally terminated. The Applicant continued to make payment of rent under the terms of the Agreement but in return, was deprived of occupancy of the Property by the Respondent. The Respondent had re-let the room at the Property to another tenant whilst continuing to accept rent from the Applicant. The Applicant was entitled to occupy the room in terms of the ongoing Agreement between the parties and was deprived of doing so by the Respondent. The Tribunal was not satisfied that any storage costs were incurred by the Respondent in relation to the Applicant's items and accordingly the Respondent had been unjustifiably enriched as a result.

11. Accordingly, the Applicant was entitled to the Order for Payment as sought.

- Decision

12. The First-tier Tribunal for Scotland (Housing and Property Chamber) granted an order against the Respondent(s) for payment of the undernoted sum to the Applicant(s):

Sum of SEVEN THOUSAND SIX HUNDRED AND FIFTY POUNDS (£7, 650)
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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.

F Watson

Legal Member/Chair

9/11/2020

Date