



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71(1) of the Private Housing (Tenancies) (Scotland) Act 2016**

**Chamber Ref: FTS/HPC/CV/19/2595**

**Re: Property at 77 Donaldswood Park, Paisley, PA2 8RT (“the Property”)**

**Parties:**

**Mr Campbell Watson, 28 Balgonie Avenue, Paisley, PA2 8RT (“the Applicant”)**

**Miss Judit Pares De Tera, Mr Alejandro Serrano Paez, formerly residing at 77 Donaldswood Park, Paisley, PA2 8RT (“the Respondents”)**

**Tribunal Members:**

**Sarah O'Neill (Legal Member)**

**Decision (in absence of the Respondents)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment by the respondents of the sum of £9600 should be granted in favour of the applicant.**

**Background**

1. An application was received on 19 August 2019 from the applicant’s representative for a payment order brought in terms of rule 111 (Application for civil proceedings in relation to a private residential tenancy) of Schedule 1 to the First Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulations 2017 (“the 2017 rules”).
2. The applicant was seeking payment of rent arrears of £9600 from the respondents in relation to the property, being the amount of arrears outstanding as at the date of the application.
3. The application included a copy of the tenancy agreement and a rent statement showing the rent arrears outstanding to be £9600.

4. A case management discussion (CMD) was held on 9 October 2019 in the absence of the respondents. The tribunal considered the rent account which had been provided, and having discussed this with the applicant and his representatives, accepted that the sum due by the respondents to the applicant was £9600 up until August 2019. The applicant told the tribunal that the respondents were due to leave the property that day, following an eviction order previously granted by the tribunal. The tribunal adjourned the CMD at the request of the applicant, to allow him to amend the application to request an increase in the sum claimed, to include two further payments which he said were due at the end of the tenancy.
5. The applicant also indicated that he may wish to claim compensation for any damage to the property. The tribunal explained to the applicant that any claim for additional sums must be made to the tribunal in advance so that this could be intimated on the respondents, and that any amendment to include new issues such as damage to the property must be requested in terms of rule 14, and required the consent of the tribunal. The tribunal also advised that, if the applicant had no forwarding address, the applicant should submit a request for service by advertisement.
6. A letter was sent to the parties by the tribunal administration on 16 October by recorded delivery, notifying them that the adjourned CMD would take place on 19 November 2019. An application for service by advertisement was received from the applicant's representative on 14 November 2019. The tribunal noted that the track and trace confirmation for the letter of 16 October to the respondents showed that the letter had been signed for on 17 October 2019 with the name 'Judith'. As this is the first name of one of the respondents, the tribunal was satisfied that the respondents had been notified of the CMD. The applicant's representative was therefore informed that service by advertisement was not required, and the CMD would proceed as scheduled.

### **The Case Management Discussion**

7. The adjourned case management discussion (CMD) was held on 19 November 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow G2 8GT. The applicant was present, and was accompanied by Ms Lesley Morrison and Ms Sharon McKnight of Rentahome Ltd, his letting agent. The respondents were not present and were not represented. No written representations or time to pay application were received from the respondents prior to the CMD
8. The tribunal was satisfied that the requirements of rule 17 (2) of the 2017 rules regarding the giving of reasonable notice of the date, time and place of a CMD had been duly complied with. The tribunal delayed the start of the CMD by 10 minutes, in case the respondents had been detained. They did not appear, however, and no telephone calls, messages or emails had been

received from them. The tribunal therefore proceeded with the CMD in the absence of the respondents.

9. The applicant told the tribunal that the respondents had left the property on 9 October 2019. Ms Morrison told the tribunal that she believed that the respondents were having their mail redirected from the property to their new address, which was unknown. She referred the tribunal to an updated rent statement, showing a new balance of £11800 as at 9 October 2019. She asked the tribunal to grant an order for this amount in favour of the applicant.
10. The tribunal chairperson noted that no amendment request had been received from the applicant either seeking an increased sum for rent, or seeking to add any new claim in respect of damage to the property. It appeared that there had been a misunderstanding as to what the applicant was required to do to request an amendment. Ms Morrison said that she believed a copy of the updated rent statement had been emailed to the tribunal prior to the CMD.
11. Having checked the case management system, the tribunal clerk confirmed that there was no record of this having been received. The tribunal chairperson explained that the tribunal must follow the 2017 rules, which clearly stated (in terms of rule 14A) that an amendment request to increase the sum claimed must be intimated to the tribunal and to the other party at least 14 days prior to the CMD. Likewise, any request to amend the application to raise a new issue, such as compensation for damage to the property, had to be requested in advance of the CMD in terms of rules 13 and 14.
12. The tribunal chairperson noted that there was provision in paragraph 11 of the tenancy agreement for a deposit of £1200 to be paid by the respondents to the applicant. She asked what had happened to the deposit money at the end of the tenancy. Ms Morrison and Ms McKnight confirmed that the applicant had made a claim to have the full deposit returned from the tenancy deposit scheme in respect of damage to the property only, which was currently being considered.
13. The tribunal chairperson queried the updated sum of £11800 shown on the rent statement. This showed additional entries for one month's rent of £1100 on both 9 September and 9 October 2019. She noted that the tenancy agreement provided that rent was to be paid on the 9<sup>th</sup> of each month in advance. Given that the respondents had moved out of the property on 9 October, she queried why an additional £1100 was shown as at 9 October 2019. This would suggest that the applicant was seeking an additional payment of rent for a period after the respondents had moved out. The applicant and his representatives indicated that they agreed that this payment was not due to be paid by the respondents, as the payment due on 9 September 2019 was for the rent payable up until 9 October 2019.

14. The tribunal adjourned the CMD briefly to allow the applicant and his representatives to consider whether they wished to request a further adjournment to allow them to submit a request to amend the application, or whether they wished to seek an order for the £9600 arrears claimed in the original application. Following the adjournment, the applicant stated that rather than delay things further, he wished to seek an order for £9600.

### **Findings in Fact**

15. The tribunal made the following findings in fact:

- The tribunal was satisfied that there was a private residential tenancy in place between the parties, which had commenced on 9 May 2018.
- The applicant was the owner of the property. He was the landlord in terms of the private residential tenancy agreement between the parties.
- The respondents left the property on or around 9 October 2019.
- The rent due under the tenancy agreement was £1100 per calendar month payable in advance on the 9<sup>th</sup> of each month.
- As at 9 August 2019, the respondents owed the applicant the sum of £9600 in rental payments for the period up until 9 September 2019.

### **Reasons for Decision**

16. The tribunal was not satisfied that the applicant had properly requested an amendment to the original sum claimed, as required in terms of rule 14A of the 2017 rules. The respondent had not therefore been notified of the requested amendment as required by that rule. The tribunal was satisfied on the basis of all the evidence before it that the respondents owed the applicant £9600 in rent arrears as at the end of their tenancy. The tribunal therefore decided to make an order for payment by the respondents to the applicant of that sum, as requested by the applicant.

17. The tribunal noted that a claim had been made by the applicant for return of the tenancy deposit from the tenancy deposit scheme in respect of damage to the property. The tribunal chairperson told the applicant that it would be open to him to bring a further application at a future date in respect of any further rent arrears alleged to be due and/or any claim for damage which was not covered by any award made by the tenancy deposit scheme in his favour.

### **Decision**

The tribunal grants an order for payment by the respondents to the applicant for the sum of £9600.

## 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.

  
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Legal Member/Chair

19/11/19  
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Date