



**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/22/1683

Re: Property at 15 Eriff Road, Bellsbank, Dalmellington, KA6 7TT ("the Property")

Parties:

Mr Lorne Campbell, Flat 2, 42 Ashley Road, London, N19 3AF ("the Applicant")

**Ms Paulie Florence Brass Brogan, 82 Auchinleck Crescent, Glasgow, Lanarkshire,
G33 1PT ("the Respondent")**

Tribunal Members:

Gillian Buchanan (Legal Member) and Helen Barclay (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent is liable to make payment to the Applicant of the sum of nine hundred and fifty pounds and forty nine pence (£950.49).

Background

Previously a Case management Discussion ("CMD") took place on 26 October 2022 (erroneously referred to in the first paragraph of the Case Management Discussion Notes subsequently issued as 16 October 2022). At the CMD the Tribunal noted the issues to be resolved between the parties and adjourned the application to a Hearing to take place on a date to be intimated to the parties.

After sundry procedure (all of which is detailed in a Hearing Note of 24 April 2023), a Hearing was assigned to take place on 24 August 2023 at 10.00am.

Subsequent to the Hearing on 24 April and prior to the Hearing on 24 August 2023 the Tribunal received the following additional documents:-

- i. From the Applicant's representative, Mr Halley of Jackson Boyd Lawyers, an email dated 17 June with a Second Inventory of Productions attached, and an email dated 23 August 2023.
- ii. From the Respondent an email dated 22 August 2023.

The Hearing

At the Hearing, which took place by telephone conference on 26 August 2023, the Applicant was not in attendance but was represented by Mr Halley of Jackson Boyd Lawyers who stated that the Applicant and one witness, Mr Findlay, were on stand-by to join the Hearing. The other witness named on the Applicant's List of Witnesses would not be attending.

The Respondent was initially present.

The Hearing commenced at 10.10am.

At the outset of the Hearing the Tribunal explained to the parties the process that would be followed to hear the parties' evidence and asked the Respondent to confirm that she understood what would be happening. The Respondent explained that she had tried to secure representation without success and that she had been told legal aid was not available. She said she didn't really know what would be happening and thought the process unfair towards those in her situation where the other party had funds to be represented. She asked if a neighbour had sent any communications to the Tribunal but stated the neighbour was moving house and may not have had time to do so. The Tribunal confirmed that no paperwork had been received and asked if the Respondent had any witnesses to give evidence. The Respondent said she had no witnesses.

As a preliminary matter the Tribunal asked Mr Halley to explain why the Applicant's Second Inventory of Productions was late. It ought to have been lodged no later than 14 days prior to the Hearing. He apologised and stated that the document contained within the Second Inventory had been overlooked from the First Inventory due to an administrative error on his part. He thought the document had been lodged when that was not the case.

At that point the Respondent left the telephone call. This was at 10.21am. The Tribunal waited a few moments to allow time for the Respondent to re-join the Hearing. She didn't do so and the Hearing Clerk called her telephone number to see if she was intending to re-join but did not get an answer.

The Tribunal then adjourned the Hearing to allow further calls to me made to the Respondent by the Tribunal Clerk and Mr Halley was asked to re-join the call at 10.30am.

The Tribunal Clerk called the Respondent a second time and received no answer. He left a voicemail asking her to get in touch. There was no response.

The Tribunal Clerk called the Respondent a third time. She answered the telephone, coughed and hung up.

The Respondent called the Clerk but hung up immediately.

The Tribunal Clerk called the Respondent a fourth time. He got no reply.

The Tribunal reconvened at 10.30am. Just as it did so, the Respondent dialled into the call but had no sooner done so than she coughed and hung up.

The Tribunal adjourned again to make further attempts to ascertain the Respondent's position.

The Tribunal Clerk sent a text message to the Respondent. He obtained no reply.

The Tribunal Clerk made a fifth call to the Respondent. He got no reply.

At 10.50am the Tribunal Clerk called Mr Halley and asked him to re-join the call. The Tribunal reconvened shortly thereafter.

The Tribunal made strenuous efforts to contact the Respondent to ascertain her position and in particular whether she intended to re-join the Hearing and proceed with her opposition to the application. These efforts were unsuccessful.

Mr Halley for the Applicant invited the Tribunal to grant a payment order for £950.49 being the amount sought from the Applicant.

Findings in Fact

- i. The parties entered into a PRT relative to the Property that commenced on 12 June 2019.
- ii. The Property was let on an unfurnished basis.
- iii. The rent agreed to be payable under the PRT was £525 per calendar month payable in advance and a deposit was also paid by the Respondent to the Applicant in a sum of £525.
- iv. The deposit was refunded to the Applicant after the tenancy ended. Of that amount £396.99 was applied to rent arrears which cleared those arrears.
- v. The Applicant offset the balance of the deposit, namely £128.01, against remedial and clearance costs incurred by him relative to the Property following the Respondent's departure.
- vi. The remedial costs arose as a consequence of the Respondent's failure to take reasonable care of the Property as required in terms of Clause 17 of the PRT.
- vii. The clearance costs arose as a consequence of the Respondent not removing her belongings and possessions from the Property on departure.
- viii. In this application the Applicant seeks remedial and clearance costs of £950.49.
- ix. The Respondent failed to take reasonable care of the Property.
- x. The Respondent failed to clear her belongings and possessions from the Property on departure therefrom.
- xi. The Applicant's claim is reasonable in the circumstances.

Reasons for Decision

After careful consideration, the Tribunal determined to proceed in the absence of the Respondent in terms of Rule 29 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017. The Respondent was aware of the Hearing and had initially joined the call. The Respondent would be aware of the efforts made by the Tribunal to contact her by text and telephone to ascertain her position. She did not answer those enquiries.

The Tribunal considered its over-riding objective to deal with the proceedings justly. The Applicant was prepared and ready to proceed with the Hearing. Having carefully considered the position and following the efforts made by the Tribunal to contact the Respondent, the Tribunal reached the conclusion that the Respondent was no longer intending to participate in the Hearing and proceed with her opposition to the application. The Tribunal therefore granted a payment order in a sum of £950.49.

The Hearing ended at 11.00am.

Post Hearing Events

Following the conclusion of the Hearing and the Decision of the Tribunal, at 11:23 the Tribunal administration team forwarded to the Tribunal an email sent from the Respondent's email address and timed at 10:26 which stated:-

"Hi, I'm typing for my mum as she's had a coughing fit and hung up from the call. She has a chest infection.

I'm worried as she's confused about all of this.

Now upset and can't stop coughing.

Sophie Violet Brass Brogan"

That email was copied to Mr Halley for the Applicant who responded by email at 11:26 stating:-

"Dear Sirs,

I refer to the below email that has been sent following this mornings hearing.

Please can you advise whether the tribunal wishes to see written submissions from the Applicant in terms of the

Respondent's most recent email, as any further delay or motion to appeal the decision made today will be opposed

in the strongest terms.

Kind regards,

James Halley

Solicitor"

Having made a determination relative to the application no further submissions could be heard by the Tribunal. However, Ms Sophie Brogan's email does not state that the Respondent still intended to join the call, that she wished to persist with her opposition to the application or that she wished an adjournment of the Hearing.

Decision

The Tribunal grants a payment order in favour of the Applicant requiring the Respondent to pay to him a sum of £950.49.

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.

Gillian Buchanan

Legal Member/Chair

24 August 2023
Date