



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 16 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules) in relation to an application for civil proceedings relative to a Private Residential Tenancy under Rule 111 of the Procedure Rules.

Chamber Ref: FTS/HPC/CV/23/2308

Re: 39 Kirkton Gate, East Kilbride, G74 1NF ("the Property")

Parties:

Heather Gardner residing at 1 Langholm, East Kilbride, G75 8YE ("the Applicants")

John McKeown, Jackson Boyd, solicitors ('The Applicant's Representative')

Michelle Dawson residing at 39 Kirkton Gate, East Kilbride, G74 1NF ("the Respondent")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal")

Tribunal Members: Jacqui Taylor (Legal Member)

Background

1. The Applicant submitted an application to the Tribunal for payment of arrears of rent in the sum of £2096.77 being the sum outstanding as at 10th July 2023.

2. Documents lodged with the Tribunal.

Documents lodged with the Tribunal by the Applicants were:

2.1 A copy of the Tenancy Agreement.

2.2 A copy of the inventory report dated 29th September 2022 which had been electronically signed by the Respondent on 29th September 2022 confirming that she agreed with the report.

2.3 Rent statement dated 10th July 2023 for the period 30th September 2022 to 1st July 2023 showing rent arrears of £2096.77.

2.4 Rent Statement dated 7th December 2023 for the period 30th September 2022 to 1st December 2023 showing rent arrears of £5850.

3. Written Representations by the Respondent.

The Respondent sent written representations to the Tribunal by email dated 29th November 2023. The written representations relate to this application for payment, the separate eviction application (FTS/HPC/EV/23/2307) and a counterclaim application.

A summary of the written representations is as follows:

3.1 At the commencement of the lease the Property was not wind and water tight and consequently it breached the Repairing Standard. In addition, the inventory was not correct. Consequently, the lease should not have been granted, it was not legal and consequently there is no legal basis for the claims made.

3.2 The application is malicious and vexatious and the applicant has breached the respondent's legal rights by misusing their data to conduct third party searches about them which is in breach of data laws and GDPR.

3.3 There are no rent arrears as there is no legally binding tenancy agreement. In addition the Respondent is due to be reimbursed £1500 as her employer deducted this amount from her salary due to time she had to spend away from her work in relation to repairs matters.

3.4 The electrical meter at the Property was not set up properly.

3.5 The Respondent reported an electrical repair that was required and the repair has not yet been completed.

3.6 There are no legal points raised by the Appellant. The points made by the Applicant are full of malicious and defamatory (sic) statements about the Respondent in a deliberate attempt to discredit and humiliate her. Ninety five percent of the application is made up of data obtained by breaching the Respondent's legal rights under data laws and the data has been used outwith the purpose it was provided for.

3.7 The Respondent is registered with the Local Authority for housing and she is on the waiting list for temporary accommodation. The Respondent has medical needs that needs the provision of refrigerated services for medication and therefore she must be housed where such provision is available.

3.8 The Letting Agent was served with a Data subject access request that has not been complied with.

3.9 Article six of the European Convention of Human Rights has been breached due to the data breaches and the data breach.

3.10 Remedies sought by the Respondent:

3.10.1 The Applicant's claims to be struck out.

3.10.2 The Respondent compensated for costs/ expense.

3.10.3 The Respondent's deposit returned without delay.

3.10.4 The Tribunal service should report the Landlord to the Local Authority for removal from the Landlord register as the Landlord is not a fit or proper person to be a landlord due to her lack of knowledge in relation to the legal responsibilities due to the tenant.

3.10.5 The Tribunal should report the Letting Agent to the Scottish Ministers for breaching the Letting Agent Code of Practice.

3.11 The Respondent provided an annotated copy of the inventory originally attached to the lease to demonstrate the fact that the Property failed to comply with the repairing standard, namely:

3.11.1 A plastic grill is missing from an external vent. A photograph was provided showing the plastic grill in a cupboard inside the Property.

3.11.2 The Property suffered from water ingress due to the grill to the external vent not having been fitted.

3.11.3 A crack to the internal plaster work.

3.11.4 The kitchen door does not fit the frame and could not be closed properly.

3.11.5 A gap to the silicone around one of the kitchen work tops.

3.11.6 The timer function on the switch that controls the hot water was not in proper working order.

4.The First Case Management Discussion

4.1 This case called for a Case Management Discussion (CMD) at 10.00 on 8th January 2024.

The Applicant and her Representative John McKeown attended the CMD.

The Respondent did not attend the CMD.

4.2 As a preliminary matter the Tribunal considered whether or not to continue with the CMD in the absence of the Respondent. Procedure Rule 29 permits the Tribunal to proceed on being satisfied that the Respondent has been notified of the CMD.

Mr McKeown advised the Tribunal that it was his position that the Tribunal could proceed as the Respondent had been advised of the CMD.

The Tribunal acknowledged that the letter to the parties advising them of the date and time of the Case Management Discussion was dated 9th November 2023. The letter also advised the Respondent that written representations should be received by 30th November 2023. The Respondent sent the Tribunal an email dated 29th November 2023 and attached her written representations and referred to the fact that they were due by 30th November 2023.

The case papers include a certificate of intimation by Stewart MacLaren, Sheriff Officer dated 10th November 2023 which confirmed that on 10th November 2023 at 11.15 am he served the Respondent with the documents he had been sent by the Tribunal Administration to be served on the Respondent namely:

- (i) A copy of the case papers.
- (ii) Letter to the Respondent with enclosures.
- (iii) Guidance Notes.
- (iv) Time to Pay Direction Application.
- (v) Accessibility Requirements Questionnaire.
- (vi) Data protection principles.
- (vii) Documentary Evidence Guidance.

The Tribunal considered the Respondent's representations that she had not been notified of the CMD. However, in light of the terms of the Certificate of Intimation by Stewart MacLaren, Sheriff Officer and the fact that the Respondent had timeously lodged written representations as directed in the letter to her dated 9th November 2023, which included details of the CMD, the Tribunal did not accept the Respondent's

assertion that she had not been notified of the CMD and proceeded with the CMD despite the absence of the Respondent.

4.3 Mr McKeown advised the Tribunal that the current rent arrears amount to £5850 and accordingly he sought a continuation.

4.4. Outcome of The First Case Management Discussion.

The Tribunal agreed to Mr McKeown's continuation request and determined that the application should proceed to a further Case Management Discussion.

5. Written Representations.

5.1 Written Representations from the Appellant.

The Appellant's Representative sent the Tribunal an amended application on 1st April 2024 which increased the sum claimed to £7800 and included an application for interest at the rate of 8% per annum from the date of the decision in terms of clause 8 of the Tenancy Agreement.

The updated rent statement was produced dated 27th March 2024 for the period 30th September 2022 to 1st March 2024 which stated that the outstanding rent was £7800. The Respondent had been sent a copy of the amended application.

5.2 Written Representations from the Respondent.

5.2.1 Email from the Respondent dated 4th March 2024 objecting to the fact that the eviction application had been determined separately from the application for payment and also that her recall application had not been determined.

5.2.2 Email from the Respondent dated 5th March 2024 stating the Tribunal should only be contacting her with confirmation of removal and dismissal of the application.

5.2.3 Email from the Respondent dated 7th March 2024 asking why she is receiving emails from the Tribunal as the Tribunal have been told to put all matters to the Upper Tribunal.

5.2.4 Email from the Respondent dated 1st April 2024 objecting to the Applicant sending her correspondence.

5.2.5 Email from the Respondent dated 5th April 2024 referring to her application for strike out.

5.2.6 The Respondent also sent the Tribunal administration a number of emails raising complaints about the administration of the application which were responded to by the Tribunal administration.

6. Second Case Management Discussion.

This case called for a Case Management Discussion (CMD) at 10.00 on 15th April 2024.

The Applicant and her Representative John McKeown attended the CMD.

The Respondent did not attend the CMD. The Tribunal clerk telephoned the Respondent. The Respondent did not answer the telephone call.

6.1 As a preliminary matter the Tribunal considered whether or not to continue with the CMD in the absence of the Respondent. Procedure Rule 29 permits the Tribunal to proceed on being satisfied that the Respondent has been notified of the CMD. Mrs Taylor confirmed that the Respondent had been served with details of the CMD by Stuart Sinclair, sheriff officer on 13th March 2024.

Mr McKeown advised the Tribunal that it was his position that the Tribunal could proceed as the Respondent had been advised of the CMD.

Mrs Taylor advised that she was content to proceed even though the Respondent had not joined the conference call as the requirements of Procedure rule 24(1) have been met as the Respondent had been provided with reasonable notice of CMD.

6.2 Mr McKeown confirmed that the following facts were correct:

6.2.1. The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy was 30th September 2022.

6.2.2. The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

6.2.3. The Applicant is Landlord of the Property.

6.2.4. The Respondent has not paid the Applicant rent since 3rd April 2023.

6.2.5. The rent due in terms of the tenancy is £650 per month, payable monthly in advance.

6.3 Submissions by Mr McKeown.

Mr McKeown advised the Tribunal that he considered that the Tribunal had enough information before it to grant the order for payment of rent arrears in the sum of £7800 plus interest at 8% per annum. The updated rent statement has been produced.

Clause 8 of the lease entitles the Landlord to charge rent at the rate of 8% per annum.

He referred to the written representations made by the Respondent. He explained that she is claiming that the tenancy is illegal as the Property was not wind and water tight at the start of the tenancy. He advised that when she moved into the tenancy the grate for the extractor fan had fallen off which had allowed some water ingress. The Letting Agent had arranged for grate to be repaired and he was not aware of there being any further issues. He stated that the Respondent's suggestion that there is no legal lease is frivolous. He believes that the Tenant has withheld the rent in response to the Landlord serving the Tenant with the Notice to Leave.

In connection with the application to increase the sum claimed to £7800 he explained that a copy of the application had been sent to the Respondent and the application had been validly made in terms of Procedure Rule 14.

He also confirmed that the Respondent has not made any additional payments after 27th March 2024, the date of the latest rent statement that has been produced. He

advised that the Respondent is still resident in the Property even although the Eviction Order has been granted.

7. Decision

7.1. Findings in Fact.

The Tribunal made the following findings in fact:

7.1.1 The Respondent is Tenant of the Property in terms of the lease between the parties. The start date of the Tenancy was 30th September 2022.

7.1.2 The lease is a Private Residential Tenancy in terms of the Private Housing Tenancies (Scotland) Act 2016 ('The 2016 Act').

7.1.3 The Applicant is Landlord of the Property. The Tribunal had a copy of the Applicants' title deeds being Land Certificate LAN98989. Section B of the Land Certificate confirmed that the Applicant is heritable proprietors of the Property.

7.1.4 The Respondent has not paid the Applicant rent since 3rd April 2023.

7.1.5 The rent due in terms of the tenancy is £650 per month, payable monthly in advance.

7.1.6 The outstanding rent due by the Respondent as at 27th March 2024 was £7800.

7.1.7 Clause 8 of the lease states that interest on late payment may be charged at 8% per year from the date on which the rent is due until payment is made.

7.2 The Tribunal considered the Respondent's written representations. Their response is as follows:

7.2.1 The Respondent alleges that the Property did not comply with the repairing standard and as a result the lease is invalidated. This is not correct. A lease is not invalidated if the condition of a property does not meet the repairing standard.

7.2.2 Any complaint about misusing the Respondent's data should be submitted to the Information Commissioner's Office.

7.2.3 The Respondent has not sufficiently evidenced her claim that there are no rent arrears.

7.2.4 The Tribunal do not accept that Article six of the European Convention of Human Rights has been breached due to the alleged data breaches and the data breach.

7.2.5 The Tribunal would not report a Landlord to Landlord registration on the basis of unsubstantiated claims.

7.2.6 If the Respondent believes that the Letting Agent has breached the Letting Agent Code of Practice a separate application should be made to the Tribunal.

7.2.7 The Tribunal are entitled to ungroup the present application from the Eviction application.

7.2.8 The Tribunal were required to sent the Respondent correspondence to ensure that she had been advised of the detail of the application and was given the opportunity to respond.

7.2.9 The reference to requesting a referral to the Upper Tribunal and the request for recall were premature as the Tribunal had not made a determination in relation to this application.

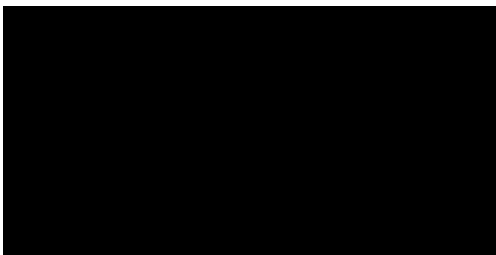
7.3 The Tribunal accepted as correct the evidence of the rent statement produced which showed the outstanding rent to be £7800 as at 27th March 2024, a copy of which had been provided to the Respondent.

7.4 The Tribunal determined that the outstanding rent due by the Respondent amounted to £7800 and accordingly they issued an Order for Payment in this sum.

7.5 The Tribunal considered that payment of interest at a rate of eight percent per annum was contractual and that it was reasonable to make an order for payment of interest.

8. 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.



Legal Member

15th April 2024